

VOL. VI

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

-vs-

10-CR-219S

TONAWANDA COKE CORPORATION  
MARK L. KAMHOLZ,

Defendants.  
-----

Proceedings held before the  
  
Honorable William M. Skretny, U.S.  
  
Courthouse, 2 Niagara Circle, Buffalo,  
  
New York on March 6, 2013.

APPEARANCES:

AARON J. MANGO,  
Assistant United States Attorney,  
ROCKY PAIGGIONE, Senior Counsel,  
U.S. Department of Justice,  
Appearing for the United States.

GREGORY F. LINSIN, ESQ.,  
JEANNE M. GRASSO, ESQ.,  
ARIEL S. GLASNER, ESQ.,  
Appearing for Tonawanda Coke Corporation.

RODNEY PERSONIUS, ESQ.,  
Appearing for Mark L. Kamholz.

Also Present: Lauren DiFillipo, Paralegal  
Sheila Henderson, Paralegal

Michelle L. McLaughlin, RPR,  
Official Reporter,  
U.S.D.C. W.D.N.Y.  
(716)332-3560

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1 THE COURT: Miss Labuzzetta, would you  
2 mind calling the case, please? I know you mind,  
3 but would you?

4 THE CLERK: Criminal case 10-219S, United  
5 States of America versus Tonawanda Coke and Mark  
6 Kamholz.

7 THE COURT: Good morning. I am just so  
8 anxious to get going. Good morning.

9 MR. LINSIN: Morning.

10 MR. MANGO: Morning, your Honor.

11 THE COURT: We probably won't start for  
12 another ten minutes or so. I thought I should  
13 bring to your attention a letter from Linda J.  
14 Finn, who was juror number 11. I won't read the  
15 entire letter, but it's -- I mean, it's actually a  
16 wonderful letter, and it's obvious that she took  
17 considerable time to articulate her sentiments  
18 about jury service and her civic duty and this  
19 case. And if you can just bear with me, I thought  
20 I'd just read a couple of portions of it. It's  
21 roughly a five-paragraph letter.

22 But the letter reads, in the first paragraph,  
23 "It is with a heavy heart that I write this letter  
24 informing you of my inability to continue serving  
25 as juror participant", and then she lists her

1       number. "As I mentioned to you last Thursday, I  
2       suffer from an autoimmune disease called Crest",  
3       and she goes on to explain that a little bit.

4       "When I originally was sworn in as a juror, I did  
5       not anticipate that this would cause any problems.  
6       After five days of sitting on the jury, I've become  
7       painfully aware, in paren, literally, close paren,  
8       that I'm unable to fulfill this duty in a way that  
9       is fair to both parties involved." And then she  
10      explains her sentiments and her condition a little  
11      bit in a couple of subsequent paragraphs.

12       And then she concludes by saying, "Please know  
13      that I take my civic duty to serve as a juror very  
14      seriously, and I am disappointed that I am unable  
15      to do this." And she expresses her gratitude for  
16      the sensitivity that's been afforded to her in the  
17      process, as far as all of the parties and -- are  
18      concerned and the Court. And she concludes by  
19      saying, "I will continue to maintain silence in  
20      this case as I have been directed."

21       So I think -- I mean, it's a good letter. It  
22      substantiates her mindset in terms of the  
23      importance of her civic duties, and I think it does  
24      highlight what I'm sure you are interested in, is  
25      that the jurors take the matter seriously and are

1 committed to following the directives that we have  
2 given to them to ensure confidentiality and  
3 compliance with the specific instructions that will  
4 make this a fair case for both sides.

5 So, I am making that a part of the record, at  
6 least our juror record, in this particular case.

7 Okay. I thought I'd start on a high note and  
8 then find out if there's anything that we have to  
9 address before we bring the jury in.

10 MR. LINSIN: Your Honor, I just have a  
11 question. The Court filed a document under seal  
12 yesterday. Was it this letter that was filed under  
13 seal or --

14 THE CLERK: I knew you were going to ask.  
15 What it was was the jury usage sheet from the jury  
16 selection, because I'm not allowed to put their  
17 names on the docket. So what it does, it lists the  
18 jurors that were selected, the cause challenges,  
19 peremptory challenges, and who was not called.

20 MR. LINSIN: I was just speculating that  
21 it might have been this letter. And when I heard  
22 your Honor reference it, I was -- I just wanted to  
23 clarify. Thank you, your Honor.

24 THE COURT: Okay. You're welcome. Okay.  
25 Mr. Personius, anything this morning?

1                   MR. PERSONIUS: No, your Honor. Thank you  
2                   for asking.

3                   THE COURT: Mr. Mango, anything?

4                   MR. MANGO: Nothing from me, your Honor.

5                   THE COURT: Okay. All right. We'll  
6                   take --

7                   MR. PIAGGIONE: Your Honor, can I alert  
8                   you to one thing? There is a witness who, for  
9                   medical reasons, has some difficulty going to  
10                  attend, and defense counsel and the government are  
11                  going to stipulate to what he would testify to. We  
12                  haven't drawn up that stipulation yet, but we're in  
13                  the process of doing that.

14                  THE COURT: All right. We'll get to that,  
15                  I take it?

16                  MR. PIAGGIONE: Yes.

17                  THE COURT: Okay. Chris, if you would  
18                  have the jury in at exactly 9:45, please, I would  
19                  appreciate it.

20                  Okay. Give us about eight minutes.

21                  MR. MANGO: Your Honor, we may also have  
22                  another stipulation in the afternoon, just a very  
23                  brief factual stipulation.

24                  THE COURT: Okay. We now have about seven  
25                  minutes. All right. We'll see you then.

1 (Short recess was taken.)

2 (Jury seated.)

3 THE COURT: Good to see everyone this  
4 morning. We've been busy. We're glad you're here.  
5 We want you to know the reason why the storm front  
6 that's hit the East Coast has missed Buffalo, it's  
7 to accommodate you. We've made those arrangements.  
8 In any event, that's a positive first step. I hope  
9 you're ready for the trial day.

10 You know this is an important and serious  
11 matter, and we urge you please to keep your minds  
12 open until all of the evidence is in. This is  
13 important to both sides. The government, of  
14 course, has the burden of proof beyond a reasonable  
15 doubt on each essential element of each crime  
16 charged. The defendants are afforded and carry  
17 with them the presumption of innocence at this  
18 trial. And you have to resolve the fact issues in  
19 this case. That's really your job. You are the  
20 judges of the facts. So, you've got a job to do,  
21 and I know you've been very engaged and very  
22 attentive on behalf of all of us. We appreciate  
23 that. Please remember the resolve comes from  
24 respecting each other's views when you get to  
25 deliberation and the application of your common

1 sense, experience, and intelligence. We're happy  
2 to have you here again this morning.

3 As you can tell, all the attorneys and parties  
4 are back, present. They're, I think, prepared and  
5 ready to go. This is the case of United States  
6 versus Tonawanda Coke Corporation and Mark Kamholz,  
7 the defendant in this case. We have two  
8 defendants.

9 This is the government's case, and Mr. Mango  
10 was questioning Mr. Cahill, Patrick Cahill  
11 yesterday. And Mr. Cahill's back.

12 Want to come on up, Mr. Cahill. You remain  
13 under oath. And we'll resume with what I think is  
14 the wrap-up of the direct examination and we'll get  
15 into cross. Good morning, sir. How are you?

16 THE WITNESS: Good morning. Good, thank  
17 you.

18 THE COURT: Good seeing you. Okay. When  
19 Mr. Cahill's ready and you're ready, Mr. Mango, you  
20 may proceed.

21 MR. MANGO: Thank you, your Honor.

22 P A T R I C K W I L L I A M J O H N C A H I L L,  
23 having previously been duly sworn as a witness,  
24 testified further as follows:

25 CONTINUED DIRECT EXAMINATION BY MR. MANGO:



1 Q. Good morning, Mr. Cahill.

2 A. Good morning.

3 Q. At the time we broke yesterday I believe you  
4 had just described a conversation that took place  
5 about the bleeder valve in the presence of  
6 Defendant Kamholz and the inspectors?

7 A. Yes.

8 Q. Is that right?

9 A. Yes.

10 Q. To the best of your recollection, when did this  
11 conversation occur?

12 A. It was Friday, a Friday afternoon.

13 Q. Friday afternoon?

14 A. Yes.

15 Q. Okay. Where did this conversation occur?

16 A. In front of the bleeder shack, the green shack.

17 Q. All right. Do you recall what inspectors were  
18 present at the time of this conversation?

19 A. No, I don't.

20 Q. During the conversation do you recall showing  
21 anybody this green shack where the circular chart  
22 is kept?

23 A. Yes. Two inspectors.

24 Q. Okay. Do you recall which of those inspectors  
25 you showed the shack to?

1 A. No, I don't.

2 Q. All right.

3 MR. MANGO: Your Honor, if we could please  
4 pull up FFFF, Defendants' FFFF, please.

5 THE COURT: Okay. It is published.

6 BY MR. MANGO:

7 Q. If we can focus on that, Ms. Henderson. Thank  
8 you.

9 Mr. Cahill, do you see what's on your screen  
10 there?

11 A. Yes, I do.

12 Q. What do you recognize this document as that's  
13 on your screen?

14 A. The gas flow in the by-products area.

15 Q. Okay. Can you indicate by touching the screen  
16 the location of the bleeder valve?

17 A. Yes, I can.

18 Q. Okay. Can you indicate by touching the screen  
19 the location of the green shack?

20 A. Yes.

21 THE COURT: All right. I'll tell you what  
22 we're going to do, we're going to clear it. Go  
23 back to the first relief valve, I think is what you  
24 questioned about. Tap the screen with authority.  
25 You should get an arrow instead of drawing on it.

1 BY MR. MANGO:

2 Q. That's okay. That's the location of the  
3 bleeder?

4 A. Yes.

5 Q. That you've been calling the bleeder.

6 Can you tap with authority the location where  
7 this green shack is?

8 A. Sure.

9 Q. Which is that shaded box before that arrow?

10 A. Yes.

11 Q. Now, you've mentioned this green shack. Tell  
12 the jury, please, what's inside the green shack.

13 A. The chart recorder.

14 Q. Okay. Is that where the circular charts we've  
15 been discussing are created?

16 A. Yes.

17 Q. Is that where the release point for the bleeder  
18 is set?

19 A. Yes, it is.

20 Q. Okay. For the jury's benefit, for the line  
21 pressure that gets recorded on that circular chart,  
22 can you tap the screen at what point in the line is  
23 that measurement is taken.

24 A. Yes. The green line coming off the pipe and  
25 going right to the green shack.

1 Q. Okay. So for the lines that get recorded on  
2 that circular chart --

3 A. Yes.

4 Q. -- those lines correspond to the pressure at  
5 this point where you drew the circle?

6 A. Yes.

7 Q. Okay. Who is permitted to adjust the release  
8 point for the bleeder?

9 A. The BP supervisor and the operators.

10 Q. If an adjustment is made, is that noted  
11 anywhere?

12 A. Yes.

13 Q. Okay. Where is the adjustment noted?

14 A. It would be in the BP log book.

15 Q. Thank you, you can take that down.

16 I'd like to pull up Government Exhibit 87 now  
17 in evidence, your Honor, which is the by-products  
18 operator log book for December 31st, 2008, to  
19 May 9th of 2009.

20 Mr. Cahill, do you see that on your screen?

21 A. Yes, I do.

22 Q. I'd like to go to page 1 of this document. If  
23 we can just -- if we can just focus in on the text  
24 area of this page. Okay.

25 Do you see that on your screen?

1 A. Yes, I do.

2 Q. Okay. This page, page 100, what entry -- what  
3 date is this entry?

4 A. 3/3/09.

5 Q. On March 3rd of 2009 there was an entry?

6 A. Yes.

7 Q. Now, on the bottom half of this page, is there  
8 a shift in the left margin that is noted?

9 A. Yes. Four to midnights, 4 to 12s.

10 Q. Is there an entry at the bottom of this page  
11 for the four-to-midnight shift on March 3rd of 2009  
12 relating to the bleeder?

13 A. Yes, at the bottom.

14 Q. Okay. Can you read for the jury what it says?

15 A. Sure. "Raised bleeder to 100. Looking good."

16 Q. Okay. And there is a number there, 605?

17 A. Yes.

18 Q. Do you know who wrote this?

19 A. 605 I believe was Mike Rathman.

20 Q. How is Mike Rathman employed at the Tonawanda  
21 Coke Corporation?

22 A. Now?

23 Q. Yes.

24 A. He's not. He passed away.

25 Q. Okay.

1 A. At that time he was at Tonawanda Coke.

2 Q. At that time, what position was he in?

3 A. BP operator.

4 Q. All right. Okay. You testified yesterday that  
5 every morning of the EPA inspection you raised the  
6 set point on the bleeder. You recall testifying  
7 about that?

8 A. Yes.

9 Q. Okay. I'd like to -- keeping with Government  
10 Exhibit 87, that same log book, I'd like to show  
11 you an entry for April 14th of 2009 on page 164.  
12 If we could focus in on the -- can you please read  
13 that, Mr. Cahill?

14 A. Yes. 4/14/09.

15 Q. Okay. Take a moment and read that page,  
16 please. And when you're done with that page, look  
17 up. I want to go to the next page.

18 A. Okay.

19 Q. If we could go to the next page.

20 A. Okay.

21 Q. All right. You've reviewed the pages for  
22 April 14th, 2009?

23 A. Yes.

24 Q. Is there any notation for this day that you  
25 changed the release set point for the bleeder?

1 A. No.

2 Q. Can you tell the jury why not?

3 A. Because I didn't want anybody finding out that  
4 I was making the adjustment.

5 Q. Okay. If we can go -- if you can continue  
6 reading at the bottom of this page, April 15th of  
7 2009, do you see that?

8 A. Yes.

9 Q. Okay. Read that, and when you're ready we'll  
10 go to the next page.

11 A. Okay.

12 Q. Okay. Page 166, please.

13 A. Okay.

14 Q. And page 167. The top portion relates to  
15 April 15th.

16 A. Okay.

17 Q. All right. For the pages relating to April 15,  
18 is there any notation on any of these pages that  
19 you made an adjustment to the release point for the  
20 bleeder?

21 A. No.

22 Q. Why?

23 A. Again, I didn't want anybody knowing.

24 Q. Okay. If you can keep reading on this page for  
25 April 16th.

1 A. Okay.

2 Q. If we can go to page 168. Could you read this  
3 page, please?

4 A. Okay.

5 Q. All right. For April 16th, you've now read the  
6 entries. Is there any entry by you that you raised  
7 the bleeder set point?

8 A. No.

9 Q. Okay. Tell the jury why.

10 A. Again, I didn't want to get -- I didn't want  
11 anybody to know.

12 Q. Okay. Now, I'm just going to ask you to review  
13 the next page, 169, please.

14 THE COURT: Is there a date that this  
15 refers to?

16 THE WITNESS: Pardon me?

17 THE COURT: Is there a date that this  
18 refers to?

19 THE WITNESS: No. I don't see a date.

20 BY MR. MANGO:

21 Q. If we can -- if we go to the page before, do  
22 you see a date on this page?

23 A. Yes. 4/16/09.

24 Q. If we go to the next page --

25 A. This is still -- sorry.



1 Q. If we go to this page now, you don't see a date  
2 here?

3 A. No.

4 Q. Okay. If we can go to the next page, please,  
5 171, you see a date there?

6 A. Yes.

7 Q. For what?

8 A. 4/18/09.

9 Q. So if we can now go back to page 169. What do  
10 you believe this page -- the date of this page is?

11 A. 4/17/09.

12 Q. Okay. There's just no date on it?

13 A. Yes.

14 Q. All right. So now if you can review 4/17/09.

15 A. Okay.

16 Q. All right. I'd like to go now to page 172,  
17 which is dated 4/20/09 at the bottom. Do you see  
18 that?

19 A. Yes.

20 Q. Review that, please.

21 A. Okay.

22 Q. Please let's go to 173, which is the next page  
23 for 4/20 of '09.

24 A. Okay.

25 Q. If we can go to page 174, which relates to

1 4/21/09.

2 A. Okay.

3 Q. And the final page 175, please, which is the  
4 end of 4/21/09.

5 A. Okay.

6 Q. Now I just had you review 4/17, 4/20 and  
7 4/21 of 2009.

8 A. Yes.

9 Q. Did you see any notations on those pages that  
10 you changed the release set point for the bleeder?

11 A. No.

12 Q. Tell the jury why.

13 A. Again, because I didn't want anybody knowing.

14 Q. Now, you testified that each morning of the EPA  
15 inspection you raised the release point --

16 A. Yes.

17 Q. -- right?

18 What were you trying to prevent from happening?

19 A. The valve from opening up.

20 Q. And what from coming out?

21 A. Coke oven gas.

22 Q. And I believe you testified that it did blow  
23 off, right?

24 A. Yes.

25 Q. Can you explain that, explain why?

1 A. No, I can't. I just -- I don't know. I don't  
2 know why it went off.

3 MR. MANGO: Your Honor, may I have one  
4 moment, please?

5 THE COURT: Certainly.

6 MR. MANGO: Thank you. Thank you, your  
7 Honor. Nothing further.

8 THE COURT: Okay, Mr. Mango, thank you.

9 MR. PERSONIUS: Your Honor, this would be  
10 another witness, with your permission, that I would  
11 like to question first.

12 THE COURT: Certainly.

13 MR. PERSONIUS: Thank you, Judge.

14 THE COURT: Okay. Mr. Personius.

15 CROSS-EXAMINATION BY MR. PERSONIUS:

16 Q. Good morning, Mr. Cahill.

17 A. Good morning.

18 Q. Would you agree that whenever you consider  
19 somebody's words, you should also take into  
20 consideration their actions?

21 MR. MANGO: Objection, your Honor. I  
22 don't know what context this is being made in. It  
23 seems somewhat ambiguous.

24 THE COURT: I think it is. Sustained.

25 MR. PERSONIUS: Okay.

1 (Court reporter equipment malfunction.)

2 THE COURT: Okay. Do you recall where you  
3 want to start, Mr. Personius?

4 MR. PERSONIUS: Do you want me to go back  
5 to the beginning or go from that last -- and then  
6 you sustained the objection.

7 THE COURT: Yes.

8 MR. PERSONIUS: I can start from there, if  
9 you'd like.

10 THE COURT: Please.

11 BY MR. PERSONIUS:

12 Q. It won't be exactly as before.

13 A. Okay.

14 Q. You've heard the expression "actions speak  
15 louder than words?"

16 A. Yes.

17 Q. And that has a meaning to you?

18 A. Yes.

19 Q. And what that means is that when you're trying  
20 to determine what a person's words mean, you also  
21 have to take into consideration what their  
22 surrounding actions are, correct?

23 A. Yes.

24 Q. All right. Now, you have been in the  
25 by-products -- or you were in the by-products

1 before becoming general foreman for about how long,  
2 how many years?

3 A. I wasn't a general foreman. I was a  
4 by-products foreman.

5 Q. I'm sorry.

6 A. Okay.

7 Q. You're currently plant manager?

8 A. Yes.

9 Q. Before becoming plant manager you were in  
10 by-products?

11 A. Yes.

12 Q. You were in by-products for how many years?

13 A. Again, I want to say 13 years.

14 Q. And about eight or so of those years you were  
15 the operator?

16 A. Yes.

17 Q. And so, therefore, about five or so of those  
18 years you were the foreman?

19 A. Yes.

20 Q. And as of April of 2009, you were the -- the  
21 foreman?

22 A. Yes.

23 Q. All right. And your responsibilities, when you  
24 went from being an operator to becoming the  
25 foreman, increased?

1 A. Yes, it did.

2 Q. Is that true?

3 And I -- without getting into the details, I  
4 assume that by -- by becoming a foreman, the amount  
5 that you got paid increased too?

6 A. Yes, it did.

7 Q. And as of April of 2009, would there have been  
8 anybody at Tonawanda Coke who would have known more  
9 about the operation of the by-products unit than  
10 you?

11 A. No.

12 Q. You'd been there -- by that time you'd been  
13 there 13 straight years?

14 A. Yes.

15 Q. And the pressure relief valve is located in the  
16 by-products area?

17 A. Yes, it is.

18 Q. Now, since you became the plant manager, one of  
19 your responsibilities is to sign certain forms?

20 A. Yes.

21 Q. Okay. And some of those forms that you sign  
22 are completed by Mr. Kamholz?

23 A. Yes, they are.

24 Q. Okay. And since April of 2009 you continued to  
25 work continuously at Tonawanda Coke, correct?

1 A. Yes.

2 Q. And so has Mr. Kamholz --

3 A. Yes.

4 Q. -- is that true?

5 A. Yes.

6 Q. Okay. And since April of 2009 Mr. Kamholz has  
7 been arrested?

8 A. Yes.

9 Q. All right. That was in December of 2009?

10 A. Yes, sir.

11 Q. I'm sure you remember that.

12 A. Yes.

13 Q. And then he was indicted, which is why he's on  
14 trial now in July of 2010.

15 Do you recall that?

16 A. Yeah, 2010. Yes. What month -- yes.

17 Q. Fair enough.

18 A. Yes, sir.

19 Q. But in any event, you two have continued to  
20 work together?

21 A. Yes.

22 Q. And since you became plant foreman, your  
23 occasions to have contact with him are greater now  
24 than when you were still in by-products?

25 A. Yes, they are. Yes.

1 Q. And has Mr. Kamholz -- well, before the  
2 inspection in April of 2009, could you describe  
3 your relationship with Mr. Kamholz?

4 A. Good. It was -- we were -- it was fine. We  
5 had a good relationship.

6 Q. Okay. And did you have any reason at all to  
7 doubt or question Mr. Kamholz in terms of his bona  
8 fides?

9 A. No, none.

10 Q. And since April of 2009, what has your  
11 relationship been with Mr. Kamholz?

12 A. The same.

13 Q. It hasn't changed at all, has it?

14 A. No.

15 Q. And he still treats you the same now as he did  
16 before April of 2009, is that correct?

17 A. That's true, yeah.

18 Q. Okay. And you're called upon in your current  
19 position, as I mentioned before, from time to time  
20 to sign forms that are presented to you by him?

21 A. Yes.

22 Q. And do you have any reservations about signing  
23 those forms in terms of the accuracy or reliability  
24 of the information?

25 A. No, I don't.



1 Q. You don't hesitate to sign those forms?

2 A. No, I don't.

3 Q. Even though Mark Kamholz is the one preparing  
4 those forms for you to sign?

5 A. Yes.

6 Q. Okay. Now, as part of -- so that we can  
7 understand that, as part of this investigation,  
8 when was the first time that you were contacted by  
9 what I would call law enforcement? Do you  
10 remember?

11 A. I don't know. I really don't.

12 Q. You remember that there was a search that was  
13 executed at the plant in December of 2009?

14 A. Yes.

15 Q. And that meant that a number of agents came to  
16 the plant?

17 A. Yes.

18 Q. Do you remember how many agents came?

19 A. No.

20 Q. Okay. A lot?

21 A. I don't know.

22 Q. All right. And did any of the agents talk to  
23 you on that date?

24 A. No.

25 Q. Did the agents take records from the plant?

1 A. To my knowledge, yes.

2 Q. All right. And was it sometime after that that  
3 you were contacted by the agents?

4 A. No.

5 Q. You don't -- do you remember when you were  
6 first contacted?

7 A. No, I don't.

8 Q. If you don't remember when it was, can you tell  
9 us how that first contact occurred?

10 A. I think it was by the district attorney here.

11 Q. Mr. Mango?

12 A. Yeah.

13 Q. That's who you're pointing to?

14 A. Yes.

15 Q. All right. And he didn't come out to the  
16 plant, did he?

17 A. No.

18 Q. How is it that it was drawn to your attention  
19 that Mr. Mango wanted to talk to you?

20 A. Sent me a letter, my lawyer.

21 Q. Okay. Did you go in and talk with Mr. Mango?

22 A. Yes.

23 Q. And there were other people there, not just  
24 him --

25 A. Yes.

1 Q. -- right, when you spoke to him?

2 A. Yes.

3 Q. And that led to you testifying in front of the  
4 grand jury?

5 A. Yes.

6 Q. And that testimony that you provided to the  
7 grand jury, if I'm recalling it correctly, was in  
8 April of 2010, is that right?

9 A. Yes.

10 Q. And when you go into the grand jury, that's a  
11 room that has a number of individuals in it who  
12 have been selected to serve on the grand jury?

13 A. Yes.

14 Q. And it could be somewhere between 16 and 23  
15 people that were in that room to listen to you  
16 testify?

17 A. Yes, that is true.

18 Q. And when you went into the grand jury room,  
19 Mr. Mango was present with you?

20 A. Yes, he was.

21 Q. And there was a person, such as Michelle, who  
22 was there who was taking down with one of those  
23 machines everything that was said in the grand  
24 jury?

25 A. Yeah.

1 Q. And you were sworn in before you provided  
2 answers to Mr. Mango's questions, just like you  
3 were here today?

4 A. Yes.

5 Q. So the information you gave in the grand jury  
6 was under oath?

7 A. Yes, it was.

8 Q. And then Mr. Mango proceeded to ask you a  
9 series of questions, some of which were on the same  
10 topics that you testified about here yesterday and  
11 this morning, correct?

12 A. Yes.

13 Q. Can -- was there anybody else in the room other  
14 than the grand jurors, Mr. Mango, and the court  
15 reporter, that you recall?

16 A. Judge or -- no.

17 Q. You don't recall anybody else being there? In  
18 other words, there was nobody -- there was nobody  
19 there representing either the company or  
20 Mr. Kamholz, right?

21 A. No.

22 Q. And you weren't questioned by anybody other  
23 than Mr. Mango, correct?

24 A. Correct.

25 Q. All right. Now, as a result of that appearance

1 by you, you're aware that a transcript was created  
2 of your testimony?

3 A. Yes.

4 Q. Okay. And in preparing to testify here in this  
5 trial, you've had a chance to review that  
6 transcript?

7 A. Yes, I did.

8 Q. And you've had a chance to -- to make comment  
9 on anything in that transcript that you felt was  
10 not accurate?

11 A. Yes.

12 Q. Okay. And you've provided some comments on  
13 entries that were in that transcript that you  
14 didn't feel were accurate --

15 A. Yes, I did.

16 Q. -- right?

17 And those changes were made to the transcript?

18 A. Yes.

19 Q. Okay. And after the changes were made, did you  
20 then get a chance to review this revised  
21 transcript?

22 A. Yes.

23 Q. Okay. And are you satisfied then that the  
24 contents of that revised transcript of your grand  
25 jury testimony from April of 2010, that that

1 transcript is accurate?

2 A. Yes. To my knowledge, yes.

3 Q. Okay. Because you went through this whole  
4 process of reviewing it, suggesting changes, the  
5 changes were made, and you reviewed it again, true?

6 A. Yes.

7 Q. Now, you also mentioned in your testimony  
8 yesterday that this pressure relief device, or as  
9 it's called the bleeder --

10 A. Yes.

11 Q. We can call it either way, right? It's the  
12 same thing?

13 A. Yes.

14 Q. -- that that was deactivated or shut down in  
15 March of 2010?

16 A. Yes.

17 Q. All right. And are you aware that the plan to  
18 shut down that device had been -- been in  
19 existence -- there had been a plan to shut it down  
20 for some period of time prior to that?

21 A. That's what I've heard, yes.

22 Q. That's what you've heard. Who have you heard  
23 that from?

24 A. Guys in the plant say that they were going to  
25 shut it down and build a new one, make a new one.

1 Q. Okay. Do you -- do you have a recollection of  
2 when you first heard that there were plans in place  
3 to shut down the PRV?

4 MR. MANGO: Objection, your Honor.

5 THE COURT: Grounds?

6 MR. MANGO: This seems to be based on  
7 hearsay. He's saying he heard this from other  
8 people in the plant.

9 THE COURT: It's okay. Overruled.

10 THE WITNESS: Could you repeat --

11 BY MR. PERSONIUS:

12 Q. Of course. Don't be bashful --

13 A. No.

14 Q. -- about asking for that.

15 Do you remember when it was that you first  
16 heard that there were plans to shut down or  
17 deactivate the pressure relief valve?

18 A. No, no.

19 Q. Do you remember if you heard that before this  
20 inspection in April of '09?

21 MR. MANGO: Objection, your Honor. That's  
22 asked and answered. He doesn't remember.

23 THE COURT: I'll let him answer.  
24 Overruled.

25 THE WITNESS: No.

1 BY MR. PERSONIUS:

2 Q. You don't remember when it was?

3 A. No.

4 Q. All right. Now, I saw in your grand jury  
5 testimony, and you can correct me if I'm wrong,  
6 that you were asked if -- if you had spoken to  
7 Mr. Kamholz at any time prior to April of 2009  
8 about the pressure relief valve in the by-products  
9 area.

10 Do you remember being asked that in the grand  
11 jury?

12 A. I think so.

13 Q. If you don't remember, just say "I don't  
14 remember."

15 A. Okay. Sorry.

16 Q. Let me ask you the question. If we have to, we  
17 can go to the transcript.

18 Had you ever spoken to Mr. Kamholz about the  
19 pressure relief valve in the by-products area prior  
20 to April of 2009, the conversation you've testified  
21 about here yesterday?

22 THE COURT: Do you understand that  
23 question?

24 THE WITNESS: No, I don't.

25 MR. PERSONIUS: You didn't understand it



1 either?

2 MR. PERSONIUS: Before April -- I'll start  
3 again.

4 THE COURT: No.

5 MR. PERSONIUS: It's a good idea, right,  
6 Judge?

7 THE COURT: It was. Thank you.

8 BY MR. PERSONIUS:

9 Q. Before April of 2009, had you ever spoken to  
10 Mark Kamholz about the pressure relief valve?

11 A. No.

12 Q. Not about anything?

13 A. No.

14 Q. And is it your testimony that Mr. Kamholz had  
15 never mentioned to you that some steps should be  
16 taken to control the releases of the pressure  
17 relief valve?

18 A. No.

19 Q. And when you say "no" are you saying it didn't  
20 happen, or are you saying you don't remember that  
21 that happened?

22 MR. MANGO: Objection, your Honor. He  
23 answered the question.

24 THE COURT: But it -- I guess the backdrop  
25 of the question, it was confusing, so try to clear

1 it up a little bit, please.

2 BY MR. PERSONIUS:

3 Q. When you say you never had any prior  
4 conversations, were you certain that you never had  
5 any prior conversations?

6 A. No, I'm not certain.

7 Q. Okay. And the conversation that you testified  
8 about that you had with Mr. Kamholz in the  
9 by-products area, the first one in April of 2009,  
10 you told us yesterday that that happened on -- on a  
11 Friday.

12 Do you remember that?

13 A. Yes.

14 Q. Okay. Now, you also testified that you thought  
15 the inspection started the following Monday.

16 A. Yes, I did.

17 Q. All right. Now, do you remember when you  
18 testified in the grand jury that you could not  
19 specifically recall when you had the conversation  
20 with Mr. Kamholz?

21 A. I thought I said it was that Friday.

22 Q. You thought you said it was that Friday?

23 A. Yes.

24 Q. This is for identification. Would you please  
25 put on the screen Government Exhibit 3505.08.

1           Mr. Cahill, what should be on your screen is  
2           the first page of a document marked 3505.08. Do  
3           you see that?

4           A. Yes, I do.

5           Q. And do you recognize that to be the first page  
6           of your grand jury transcript?

7           A. Yes.

8           Q. And it's dated April 22nd, 2010?

9           A. Yes, it is.

10          Q. All right. Could we please go to page 13. All  
11          right.

12                 And if you go to line 5, do you remember you  
13          were asked, "Okay. Couple days, maybe a week ahead  
14          of time?" And your answer was, "Yes, right,  
15          because I do believe they came in on a Monday."  
16          Then the question was, "Okay. So maybe a couple  
17          days to a week ahead of time?" And your answer was  
18          "Yes."

19                 Is that -- is that true?

20          A. Yes.

21          Q. That's what you testified to back in April  
22          of 2010?

23          A. Yes.

24          Q. That would have been three years ago, right?

25          A. Yes.

1 Q. Because it's now March of 2013.

2 A. Yes.

3 Q. And what has caused you to remember now that  
4 the conversation that you had with Mr. Kamholz in  
5 by-products was on a Friday?

6 A. I don't know. I don't know what caused me to  
7 remember it was a Friday.

8 Q. And as you sit here now, is it your testimony  
9 that it was a Friday as opposed to being earlier  
10 that week?

11 A. Well, I still think it was a Friday.

12 Q. Okay. All right. And you told us yesterday  
13 about the -- the conversation as it related to the  
14 pressure relief valve and some things that are  
15 called drip legs.

16 Do you remember that?

17 A. Yes.

18 Q. And it's true, is it not, that that was not the  
19 entirety of the discussion that you had with  
20 Mr. Kamholz? There was more to the conversation,  
21 correct?

22 A. That day, yes.

23 Q. Right. You were -- you were in the by-products  
24 area with Mr. Kamholz, and as you've told us, there  
25 was some brief discussion about the pressure relief

1 valve, correct?

2 A. Yes.

3 Q. And there was a brief conversation about the  
4 drip legs, right?

5 A. Yes.

6 Q. Now, in addition to that, do you remember that  
7 you talked to Mr. Kamholz about the exhauster and  
8 that a different exhauster was being used? Do you  
9 recall that?

10 A. No, I don't.

11 Q. Do you remember that Mr. Kamholz was pointing  
12 out to you some concerns that he had about the  
13 condition of the by-products area?

14 A. Yes. Well, that was part of our walk-through.

15 Q. That's right.

16 A. Yes.

17 Q. And he would point out things to you in the  
18 by-products area -- not that he would, but that he  
19 did. He pointed out to you parts of the by-product  
20 area that he thought should be cleaned up for the  
21 inspection, is that true?

22 A. Yes.

23 Q. And do you remember some of the -- some of the  
24 areas that he pointed to and said Pat -- or words  
25 to this affect, Pat, you got to clean this up?

1 Do you remember what he referred to?

2 A. Yes. I think it was over by the LGAs.

3 Q. And the LGAs are, again, what, please?

4 A. The three big tanks on that diagram if you want  
5 to --

6 Q. All right. LGAs, though -- this is more for --  
7 are they for ammonia?

8 A. Yes, for ammonia.

9 Q. Is it ammonia?

10 A. Yeah.

11 Q. Okay. And do you remember if he referred to  
12 the condition of what's called the moat?

13 A. Yes. I would say that was the tar moat, yes.

14 Q. Okay. And it had -- I don't know what to call  
15 it. What did the moat have in it that shouldn't  
16 have been there?

17 A. A lot of pallets, buckets, rags.

18 Q. Okay. And did he point to that too and say you  
19 should clean up the moat?

20 A. Yes.

21 Q. Okay. And did -- there is a building called  
22 the AC building?

23 A. Yes.

24 Q. Again, what's the AC building?

25 A. That's where the still was to strip the

1 ammonia.

2 Q. Did you walk through the AC building?

3 A. Yes, we did.

4 Q. Did he comment about the condition of the AC  
5 building, too?

6 A. Yes, he did.

7 Q. And told you you got to clean this up --

8 A. Yeah.

9 Q. -- right?

10 A. Yes.

11 Q. And can you remember any other parts of the --  
12 the BP area that you talked about with Mr. Kamholz?

13 A. Back behind the BP area too, there were a lot  
14 of tar pumps, a lot of pumps just laying around.  
15 He said you got to clean that up. We did. That's  
16 why I know it was a Friday, because we worked the  
17 weekend to get everything ready for Monday morning.

18 Q. Now, you've told us that you had this -- this  
19 conversation about the pressure relief valve with  
20 Mr. Kamholz while you were in the BP area.

21 A. Yes.

22 Q. And not that it's important, but if you can it  
23 would help us.

24 Do you remember specifically where you were  
25 when the subject of the pressure relief valve came

1 up?

2 A. On Broadway right across from the green shack.

3 Q. So if you're across from the green shack, are  
4 you then also near where that pressure relief valve  
5 is?

6 A. Yes.

7 Q. Okay. And in that area where you were standing  
8 when you had that PRV discussion with Mr. Kamholz,  
9 is that a noisy area?

10 A. Not really, no.

11 Q. It's not noisy?

12 A. No.

13 Q. You don't have noise coming from steam vents?

14 A. No, sir.

15 Q. Okay. So your testimony is that you don't find  
16 the BP area to be noisy?

17 MR. MANGO: Objection, your Honor. He  
18 didn't say that.

19 MR. PERSONIUS: I can restate it, Judge.

20 THE COURT: Please.

21 BY MR. PERSONIUS:

22 Q. The area you were standing on on Broadway,  
23 across from this valve and where the green shack  
24 is, it's your testimony that that's not a noisy  
25 area?



1 A. Yes.

2 Q. And you don't hear steam coming from the vents  
3 in that area?

4 A. No.

5 Q. Okay. And that's where you had the  
6 conversation about the PRV with Mark?

7 A. Yes.

8 Q. Okay. And your testimony, if I understood it  
9 correctly yesterday, is that what Mr. Kamholz said  
10 was, "We can't have that going off when they're  
11 here." Did I get that right?

12 A. Yes, you did.

13 Q. Okay. And that's what you testified to  
14 yesterday, right?

15 A. Yeah.

16 Q. All right. Now, I don't know if you noticed  
17 this when you reviewed your grand jury testimony,  
18 but do you realize that during your grand jury  
19 testimony you had that -- that statement by  
20 Mr. Kamholz three -- three other different ways.  
21 This is only one of the four ways you testified to  
22 it in the grand jury.

23 Would you like to go through those? I would,  
24 so why don't we. That was not the right question.

25 This is, again, just -- just for

1 identification, but we're -- if we could back up  
2 the transcript again, which is Government Exhibit  
3 3505.08. And if we could please go to page 14.

4 And I want to draw your attention, Mr. Cahill,  
5 to line 8. And do you see in quotes, "We can't  
6 have that going off when they're here," unquote.

7 Do you see that?

8 A. Yes, I do.

9 Q. That's how you have indicated you testified  
10 yesterday. That's what you recall Mr. Kamholz  
11 saying, right?

12 A. Yes.

13 Q. If you go down to line 20 -- and this is again  
14 in quotes -- this is Mr. Mango indicating, and Mark  
15 Kamholz said, quote, "We can't let that happen when  
16 the inspectors are here," unquote.

17 Do you see that?

18 A. Yes, I do.

19 Q. And you agree with that, that that's what was  
20 said?

21 A. Yes, I do.

22 Q. And let's go to -- in this exhibit, please, to  
23 page 22. And if you can, go down to line 24. This  
24 is you testifying: "Yes. Yes. And he said,  
25 quote, We can't have that going off, unquote,

1 period."

2 Do you see that?

3 A. Yes, I do.

4 Q. Nothing about inspectors, nothing about when  
5 they're here, and part of your same grand jury  
6 testimony, true?

7 A. Yes.

8 Q. Okay. And then let's go to page 20. And  
9 please go to line 10. And you were asked a  
10 question by Mr. Mango: "So, that inspection  
11 happened, and he told you dial it up before they  
12 come in and at the end of the day, you dial it  
13 down." And your answer was: "Yes."

14 Do you see that?

15 A. Yes, I do.

16 Q. Okay. Mr. Kamholz never said that, did he?

17 A. No.

18 Q. And you, nonetheless, agreed with Mr. Mango  
19 when that's how he stated what Mr. Kamholz had said  
20 to you in the grand jury, right?

21 A. Yes, I did.

22 Q. Okay. So, you agree that in the grand jury  
23 four different ways that you described what  
24 Mr. Kamholz told you?

25 MR. MANGO: Your Honor, objection. At

1       least two of those ways I described it. So he may  
2       have acknowledged that, I just --

3               MR. PERSONIUS: I can restate it, Judge.

4               THE COURT: No, the jury's heard  
5       everything. I think we are clear.

6               Move on, please.

7               MR. PERSONIUS: Thank you, Judge.

8               THE COURT: Objection overruled.

9       BY MR. PERSONIUS:

10      Q. You agree?

11      A. Yeah.

12      Q. Okay. Thank you.

13              And you also testified yesterday about a  
14      conversation involving the drip legs.

15      A. Yes, I did.

16      Q. And you mentioned to us that these are -- we  
17      saw picture of these earlier, but it's a device  
18      that drops down in a vertical way, and it's a way  
19      to get moisture out of the gas line, and apparently  
20      there is a valve at the bottom you can open to  
21      drain off the liquid.

22              But then what you should do is close it?

23      A. Yes.

24      Q. If you keep it open, there's at least some  
25      amount of coke oven gas that could escape?

1 A. Yeah.

2 Q. Okay. Now, you testified yesterday, and you  
3 tell me if I have this wrong, but the way I got it  
4 in my notes is that what you recall Mr. Kamholz  
5 saying is, "We can't have those valves open while  
6 they're here," unquote.

7 And that's what your current recall is, is that  
8 fair?

9 A. Yes.

10 Q. Okay. Now, with the same exhibit for  
11 identification, Government Exhibit 3505.08, which  
12 is your transcript, could we please go to page 14.

13 All right. Now, on -- on page 14, line 8, your  
14 testimony in quotes was, "We can't have that going  
15 off when they're here," unquote.

16 Do you see that?

17 A. Yes, I do.

18 Q. And we both agree that's the substance or  
19 that's really what you testified to yesterday,  
20 right?

21 MR. MANGO: Your Honor, this relates to  
22 the pressure release valve.

23 MR. PERSONIUS: Okay. I apologize.  
24 That's my error.

25 MR. MANGO: Just to clarify where we are.

1 THE COURT: No, sustained.

2 MR. PERSONIUS: It is a complete mistake  
3 on my part.

4 THE COURT: We'll strike the question.

5 BY MR. PERSONIUS:

6 Q. Okay. I'm not -- I made a mistake.

7 If you go to line 12 on page 14, your testimony  
8 in the grand jury at that point about the drip legs  
9 was, quote, "We can't have gas coming out of them  
10 either," unquote.

11 Right?

12 A. Yes.

13 Q. And that's different than what you just agreed  
14 you testified to yesterday. You agree to that?

15 A. Yes.

16 Q. It's different?

17 A. Yes.

18 Q. And it's -- what's -- and in the transcript  
19 it's in quotes, right? It's got quotations marks  
20 around it?

21 A. Yes.

22 Q. And could we go to page 26, please.

23 And down on line 24, what you testified to  
24 again in quotes about the drip legs is, quote, "We  
25 can't have these valves open either," unquote.

1 Do you see that?

2 A. Yes.

3 Q. All right. So, with the testimony you gave us  
4 yesterday, and these two other quoted references in  
5 the grand jury transcript, you've put that second  
6 conversation three different questions, agreed?

7 A. Yes.

8 Q. Okay. And with both the -- the PRV  
9 conversation, if I can call it that, and with the  
10 drip leg conversation, one of the versions that  
11 you've given us does not make reference to the  
12 inspection, correct? Do you understand my  
13 question?

14 A. Yes. Yes.

15 Q. Do you understand what I'm saying?

16 A. Yes.

17 Q. All right. So as you sit here now, can you  
18 tell the jury or jurors with certainty that as to  
19 either subject, the PRV or the drip legs, that  
20 Mr. Kamholz made reference to the inspectors or the  
21 inspection?

22 A. Yes. I would say the PRV, yes.

23 Q. You would say that?

24 A. Yes.

25 Q. When you say you would say that --

1 A. Yes.

2 Q. -- are you saying that with confidence?

3 MR. MANGO: Objection. That was his  
4 answer.

5 THE COURT: He's bound by the witness, but  
6 he can, in this instance, I think pursue it.

7 Go ahead. Overruled.

8 BY MR. PERSONIUS:

9 Q. Your language was "I would say that?"

10 A. Yes.

11 Q. Okay. And you have confidence that  
12 Mr. Kamholz, when he talked about the PRV, referred  
13 in some fashion to the inspection?

14 A. Yes.

15 Q. Even though you've got these other versions  
16 sworn to in your grand jury testimony?

17 A. Yes.

18 Q. And, again, can we agree that this is an  
19 example of why you don't want to just focus on what  
20 you recall the words were, but we need to explore  
21 also what Mr. Kamholz's actions were?

22 MR. MANGO: Objection, your Honor.

23 THE COURT: Sustained.

24 BY MR. PERSONIUS:

25 Q. You have provided testimony, Mr. Cahill, as to



1 steps you took after you had this conversation with  
2 Mr. Kamholz, right?

3 A. Yeah.

4 Q. You've told us about how you would go in in the  
5 morning and you'd raise the pressure up for the  
6 pressure relief valve, right?

7 A. Yeah.

8 Q. And you'd go back at night and you -- you'd  
9 drop it back down, right?

10 A. Yes.

11 Q. And we can agree, can we not, that Mr. Kamholz  
12 never told you to do that, did he?

13 A. No, he didn't.

14 Q. And did Mr. Kamholz -- to your knowledge, did  
15 Mr. Kamholz know that you did that? Let me put  
16 that a different way.

17 MR. MANGO: Whoa, whoa, whoa. Your Honor,  
18 I object. Let him answer the question.

19 THE COURT: He can -- well, you want to  
20 withdraw the question?

21 MR. MANGO: He was working on an answer,  
22 your Honor.

23 THE COURT: Do you remember the question?

24 THE WITNESS: No, I don't.

25 MR. PERSONIUS: Let me just ask it again,

1 Judge.

2 THE COURT: All right. Let's take our  
3 time here. Okay. Ask the question.

4 BY MR. PERSONIUS:

5 Q. Did you ever tell Mark Kamholz, either before  
6 or during or after, that you were going to raise  
7 the pressure up in the morning and drop it down at  
8 night?

9 A. No.

10 Q. You never told him, did you?

11 A. No.

12 Q. And do you otherwise know if Mr. Kamholz knew  
13 what you were doing?

14 A. No.

15 Q. All right. Now, you spent some time this  
16 morning with Mr. Mango talking about the -- the  
17 by-products log?

18 A. Yes.

19 Q. He selected one page from the log and said --  
20 back in March of '09, and said, "Do you see there's  
21 a mention here of changing the pressure on the  
22 valve?"

23 A. Yes.

24 Q. And then he walked you through all the days of  
25 the inspection in April of '09 and said, "Do you

1 see any changes here regarding the pressure?" And  
2 you said, "No."

3 A. Right.

4 Q. Is that right?

5 A. Yes.

6 Q. Now, have you taken any time at all to look at  
7 this log to see how many references in this entire  
8 exhibit there are to changes in the pressure?

9 A. The whole log book, no.

10 Q. Have you ever had a chance to look at it as  
11 part of preparing for your testimony?

12 A. The pages we went through, yes.

13 Q. Just those pages. But the rest of this log,  
14 they didn't have you go through that, did they, as  
15 part of your preparation?

16 A. No.

17 MR. PERSONIUS: Just a minute, please,  
18 Judge.

19 BY MR. PERSONIUS:

20 Q. Government Exhibit 87 starts on December 31  
21 of -- okay. We have got it up on the screen. This  
22 is in evidence, too. Thank you, Lauren.

23 Would you go please to page 3. I'm sorry. It  
24 is. On page 3, the starting date for this log is  
25 December 31 of 2008, is that true?

1 A. Yes.

2 Q. And, Lauren, would you please go to page 194.

3 The ending date is May 9 of 2009?

4 A. Yes, it is.

5 Q. Right. So it covers about four months --

6 A. Yes.

7 Q. -- or so?

8 And the one date that Mr. Mango showed to you  
9 was March 3 of 2009, is that correct? Do you  
10 remember that?

11 A. Yes.

12 Q. Okay. I don't want you to spend hours doing  
13 this, but with the Court's permission I would like  
14 you to just take a quick look through this entire  
15 exhibit and let us know if you can find one more  
16 reference to a change in the pressure for that  
17 recorder than the one Mr. Mango showed you. One  
18 other one.

19 MR. PERSONIUS: May I have him do that,  
20 Judge?

21 THE COURT: Not at this time. We can do  
22 it over the break and we can question after.

23 MR. PERSONIUS: Okay. Very good, Judge.

24 Thank you, Judge.

25 BY MR. PERSONIUS:

1 Q. Do you agree, Mr. Cahill, that while it might  
2 have been the desired practice to put changes in  
3 the pressure for that PRV recorder in the -- in the  
4 by-products log book, that that didn't happen on a  
5 regular basis?

6 A. No, it didn't happen on a regular basis.

7 Q. It was rare that entries were made in this log  
8 book, wasn't it?

9 A. No. Whenever the operators would make an  
10 adjustment, they would definitely put it in the log  
11 book.

12 Q. They would?

13 A. Yes.

14 Q. So that if you go through this book, and you  
15 find, as I've represented to you, that the only  
16 reference to a change was this one on March 9th  
17 of 2009, that would be an indication -- other than  
18 when you say you changed it in April of 2009, that  
19 would be an indication that pressure never changed?

20 A. In my testimony I thought I said once you set  
21 it, that's it.

22 Q. Right. But you're saying most of the time it  
23 gets changed, the majority of times that pressure  
24 got changed, it should be in the log book and will  
25 be.

1 A. Yeah.

2 Q. All right. Now, you've referred to the little  
3 green shack which is where this recording device  
4 is.

5 A. Yes, it is.

6 Q. You've shown us on a diagram where that is,  
7 right?

8 A. Yes.

9 Q. The by-products log books, where are they kept?

10 A. In the by-products office, the BP office.

11 Q. Okay. And you make the change to the pressure  
12 at the green shack?

13 A. Yes.

14 Q. And so whoever makes the change to the recorder  
15 is then expected to go from the green shack to the  
16 by-products office to record the entry in this log  
17 book --

18 A. Yes.

19 Q. -- right?

20 That would be the procedure?

21 A. Yeah, it would.

22 Q. And how far is the -- the by-products office  
23 from there, from the green shack?

24 A. Seventy-five feet. It's not far at all.

25 Q. But they're not next to each other?

1 A. No.

2 Q. All right. Now, the fact that you didn't put  
3 entries in the by-products log book for this week  
4 or so of the inspections that you testified about,  
5 Mr. Kamholz didn't tell you to not make those  
6 entries, did he?

7 A. No, sir.

8 Q. And did you ever tell Mr. Kamholz that you had  
9 made those entries in the by-products log book?

10 A. No, sir.

11 Q. And as far as you know, Mr. Kamholz had no idea  
12 that you had done that, correct? Is that fair?

13 A. Yes, sir.

14 THE COURT: What was your question, that  
15 he had or had not made entrees in the products  
16 [sic] log book?

17 MR. PERSONIUS: I should have said had  
18 not. Did I mix it up?

19 THE COURT: I think you did.

20 MR. PERSONIUS: I'll ask it again, and  
21 thank you for correcting me.

22 BY MR. PERSONIUS:

23 Q. Mr. Kamholz, to your knowledge, would not have  
24 known that you failed to make entries for that week  
25 of the inspection in April of '09 in this log book,

1 true?

2 A. True.

3 Q. Thank you.

4 Thank you, Judge.

5 Now, in fact, other than the conversation that  
6 you've told us about that you had with Mr. Kamholz  
7 in the by-products area -- and you recall it being  
8 on a Friday?

9 A. Yes.

10 Q. -- regarding the PRV releasing, did you ever  
11 after that have a conversation with Mr. Kamholz  
12 about that?

13 A. About it releasing? No.

14 Q. Did Mr. Kamholz ever come back to you after  
15 that conversation and say, "Pat, have you made sure  
16 that that valve is not going to go off?"

17 MR. MANGO: Objection, your Honor. He  
18 said he didn't have a conversation afterwards. Now  
19 we're -- Mr. Personius is, in essence, testifying  
20 and assuming facts not in evidence.

21 THE COURT: Okay. Anything else?

22 MR. MANGO: No, your Honor.

23 THE COURT: All right. I'll permit the  
24 question. Overruled.

25 BY MR. PERSONIUS:



1 Q. You probably need it again?

2 A. Yes, please.

3 Q. Okay. Understandable. And I'll try to make  
4 this quick. But let me ask it this way.

5 Between the time of the -- what you say was the  
6 Friday conversation with Mr. Kamholz, and the start  
7 of the inspection, Mr. Kamholz didn't come to you  
8 to make sure you had done something about the  
9 pressure relief valve, true?

10 A. True.

11 Q. And during the entire period of the inspection,  
12 Mr. Kamholz never came to you to say, "Now you've  
13 taken care of this, Pat," right?

14 A. True.

15 Q. And you told us that during the inspection that  
16 the PRV actually went off, right?

17 A. Yes, it did.

18 Q. And after that happened, you agree, Mr. Kamholz  
19 never came to you and said, "Pat, what did you do?"  
20 Is that true?

21 A. Yes.

22 Q. And after that, up to the present, Mr. Kamholz  
23 has never discussed with you anything further about  
24 that pressure relief valve, true?

25 A. True.

1 Q. I now want to talk about what happened in the  
2 by-products area during the inspection.

3 A. Okay.

4 Q. And I think your testimony is that your best  
5 recollection is that this incident where the valve  
6 goes off when the inspectors are there, that that  
7 happened, it would be, I guess, the next Friday?

8 A. Yes.

9 Q. It was a week later?

10 A. Right. Yes.

11 Q. All right. Do you remember where you were with  
12 these inspectors and Mr. Kamholz within by-products  
13 when that pressure relief valve went off?

14 A. Yes.

15 Q. Okay. Could you tell the jury, please?

16 A. Yes. We were over by the green shack, the  
17 green building.

18 Q. And in relation to the pressure relief valve,  
19 if you're in the area of the green building, am I  
20 correct that that pressure relief valve would be up  
21 to your left?

22 A. Yes, sir.

23 Q. Is that correct?

24 A. If you're looking at the green shack, yes.

25 Q. Right. That's where this group was?

1 A. Yes.

2 Q. Okay. And you were present?

3 A. Yes, sir.

4 Q. Okay. What was your -- what was your reason,  
5 if you recall, for being there?

6 A. Walking around with the inspectors as  
7 supervisor of the by-products.

8 Q. The reason you were there was because this was  
9 your unit?

10 A. Yeah.

11 Q. If questions came up about the by-products  
12 area, it was expected you would answer those  
13 questions, right?

14 A. Yes, sir.

15 Q. Right?

16 A. Yes.

17 Q. Because it's your area, right?

18 A. Yes.

19 Q. And indeed, during the course of that  
20 inspection, there were a number of instances when  
21 you were asked questions about by-products because  
22 you were the supervisor, right?

23 A. Yes, sir.

24 Q. The ones that I want to -- do you remember what  
25 some of the questions were that you were asked

1 during the course of that inspection?

2 A. I want to say maybe the water in the tar moat,  
3 when you pump it out, where does it go. A couple  
4 other different ones.

5 Q. About water flow through the BH liquor, do you  
6 remember being asked about that?

7 A. No.

8 Q. That doesn't ring a bell?

9 A. No.

10 Q. The tar precipitator sump, do you remember  
11 being asked about that?

12 A. Yes.

13 Q. And the drip legs, you were asked about those?

14 A. Yeah.

15 Q. You identified where they were and how many  
16 there were and how they worked, right?

17 A. Yes, sir.

18 Q. Okay. And the light oil system, how that  
19 operated, you were asked questions about that?

20 A. Yes, sir.

21 Q. Okay. And the reason for all of this is  
22 because this is the by-products area, right?

23 A. Yeah.

24 Q. Okay. And by the way -- one other question  
25 about those drip legs. What Mr. Kamholz had told

1       you was that those drip legs should be closed,  
2       right?

3       A.   Yes.

4       Q.   And those drip legs should be closed, right?

5       A.   Yes.

6       Q.   That's the correct thing to do with them,  
7       right?

8       A.   Yes.

9       Q.   Okay.  Now, as far as the conversation, the way  
10      you've recounted it to us is the way you recounted  
11      it in your grand jury testimony.  And I want to go  
12      through that with you, if I can, step by step.

13           The pressure valve -- pressure relief valve  
14      releases -- and Mr. Kamholz made a remark that was  
15      only steam, is that right?

16      A.   Yes.

17      Q.   Okay.  And someone, one of the inspectors, said  
18      "Well, what is it?" right?

19      A.   Yes.

20      Q.   And you don't remember which inspector said  
21      that, but Mr. Kamholz's response was, "That's the  
22      pressure relief valve," right?

23      A.   Yes, it was.  Yes.

24      Q.   Which was accurate, right?

25      A.   Yes.

1 Q. That's what it was?

2 A. Yes.

3 Q. And then the next question was one of the  
4 inspectors said, "How long has that been there?",  
5 right?

6 A. Yes.

7 Q. And Mr. Kamholz responded, "I don't know,"  
8 right?

9 A. Yes, he did.

10 Q. And he then referred to you and said, "Pat, how  
11 long has that been there?", right?

12 A. Yes, he did.

13 Q. Okay. And you responded, "As long as I've been  
14 here," right?

15 A. Yes.

16 Q. Okay. And now, you've testified -- you  
17 testified yesterday that this interaction you  
18 found -- in your words, you found to be shocking  
19 and it made you angry, correct?

20 A. Yes. I said that yesterday, yes.

21 Q. Those were the words you used?

22 A. Yes, they were.

23 Q. And when you were asked specifically what it  
24 was about it that you found so shocking and made  
25 you so mad, it was because Mr. Kamholz should have

1 known when that device went off that it was coke  
2 oven gas, right?

3 A. Yes.

4 Q. That's what you testified to?

5 A. Yes.

6 Q. Now, when you testified in the grand jury,  
7 that's not what you said, is it?

8 A. I thought I said, yes. I thought I said he  
9 said it was steam.

10 Q. Okay. No, no, no. In terms of what  
11 Mr. Kamholz should have known.

12 A. Oh.

13 Q. Okay. If we could, please, for identification,  
14 Lauren, bring up Government Exhibit 3505.08, which  
15 is Mr. Cahill's grand jury testimony. And if we  
16 could, please, go to page 21.

17 Okay. And we're going -- we're going to start  
18 reading on line 20. You were asked: "Mr. Kamholz,  
19 says, quote, it's just steam, unquote." And  
20 Mr. Mango says, "Right". Or you say "right." I  
21 apologize. You say "right". And Mr. Mango says,  
22 "It's not just steam?" And your answer was, "At  
23 that point, I don't know if it was that, just  
24 steam. Steam. That might have been a reversal or  
25 charge. We were still walking and a reversal

1       happened and it looked the same."

2               Do you remember that was your testimony?

3       A.   Yes.

4       Q.   So is it still your recollection that part of  
5       your anger had to do with the fact that you thought  
6       Mr. Kamholz should have known that was coke oven  
7       gas?

8       A.   Yes.

9       Q.   You testified in the grand jury that you  
10       couldn't tell whether it was coke oven gas or  
11       steam, right?

12       A.   Right.

13       Q.   Okay. And just in fairness to you, you felt  
14       put upon because of what you felt Mr. Kamholz was  
15       doing to you, that he was putting you on the spot,  
16       right?

17       A.   Yes, sir.

18       Q.   And can we agree that, in terms of your  
19       recollection of these events, that how you  
20       interpreted what Mr. Kamholz was doing to you has  
21       affected your recollection?

22               MR. MANGO: Objection, your Honor.

23               THE COURT: Grounds?

24               MR. MANGO: There's no basis or foundation  
25       for this question, your Honor.



1 THE COURT: Let's -- do you remember the  
2 question?

3 THE WITNESS: No.

4 THE COURT: Okay. So why don't you --

5 MR. PERSONIUS: Want me to restate the  
6 question?

7 BY MR. PERSONIUS:

8 Q. Can we agree -- well, let's take one step back.  
9 You've told us that you were upset because you  
10 felt -- is it fair to say you felt upset that -- in  
11 your view, Mr. Kamholz was putting you on the spot,  
12 right?

13 A. Yes. Yes.

14 Q. And can we agree that -- and does that continue  
15 to be your view up to the present time?

16 A. Yes. Putting me on the spot for the valve,  
17 yes.

18 Q. Yes. And can we agree that -- that your -- the  
19 fact that you're upset about what was done has  
20 affected your recollection of the events?

21 MR. MANGO: That's the objection, your  
22 Honor.

23 THE COURT: All right. I'll sustain the  
24 objection. Whether he agrees or not is not  
25 necessarily a proper inclusion in the question,

1 among other things. So as to the form, I will  
2 sustain the objection.

3 MR. PERSONIUS: All right.

4 THE COURT: Because, remember, ladies and  
5 gentlemen, it's the witness's answer that's the  
6 evidence, not anything having to do with what the  
7 attorney believes or not.

8 BY MR. PERSONIUS:

9 Q. Now, the other point that you raised yesterday  
10 in your testimony was that the source of your anger  
11 is that you felt that Mr. Kamholz should have known  
12 how long that pressure relief valve had been there,  
13 right?

14 A. Yes.

15 Q. And you're not open to the fact that  
16 Mr. Kamholz may not have known how long it had been  
17 there?

18 MR. MANGO: Objection, your Honor.

19 THE COURT: Sustained.

20 BY MR. PERSONIUS:

21 Q. Do you know when the pressure relief valve was  
22 installed?

23 A. No, sir.

24 Q. Okay. And when Mr. Kamholz said "I don't  
25 know", he simply said, "Pat, how long has that been

1       there," right?

2       A.   Yes, he did.

3       Q.   And then it was after that that -- and you were  
4       called upon to answer different questions related  
5       to the pressure relief valve, right?

6       A.   Yes, sir.   Yes.

7       Q.   Would it be fair to say you weren't happy about  
8       being put in that position?

9       A.   Yes.

10      Q.   Again, you felt like you had been put on the  
11      spot?

12      A.   Right.

13      Q.   And you had to go to the -- the green shack and  
14      provide some explanation to these inspectors,  
15      right?

16      A.   Yes.

17      Q.   And at some point the inspectors also asked you  
18      for charts?

19      A.   Yes, they did.

20      Q.   Was that that same day, or was that at a later  
21      time?

22      A.   It was the same day.

23      Q.   The same day?

24      A.   Yes.

25      Q.   So did you, then, have to go to your office,

1 the by-products office, to look for those charts?

2 A. Yes. It wasn't my office. It was a  
3 by-products office. And we went in and looked for  
4 them, and we couldn't find them.

5 Q. Was that stressful for you, that you couldn't  
6 find them?

7 A. A little, yeah.

8 Q. And did you feel nervous?

9 A. Yes.

10 Q. You were uncomfortable?

11 A. Right.

12 Q. And all of this made you unhappy, right?

13 A. Yes.

14 Q. And the person you blame for that is Mark  
15 Kamholz?

16 A. I blame Mark for not knowing the valve. That's  
17 what I blame Mark for. How long it should have  
18 been there.

19 Q. But he put you through all this having to  
20 explain it and then looking for records you  
21 couldn't find, right?

22 A. Yes.

23 Q. All right. And then further than that, you had  
24 to go back the following week and provide further  
25 information about the pressure relief valve to the

1 inspectors, right?

2 A. The charts, yes.

3 Q. Well, something dealing with the pressure  
4 relief valve, right?

5 A. Yes. Yes.

6 Q. And did you do that on one day or more than one  
7 day?

8 A. It was the one day, Monday, the Monday we came  
9 come back into work.

10 Q. On Monday?

11 A. Yes.

12 Q. Do you remember who you met with then and  
13 provided that information to?

14 A. I ended up -- I gave them to Mark.

15 Q. Pardon?

16 A. I gave them to Mark Kamholz.

17 Q. Right.

18 But did you talk to the inspectors again on  
19 Monday about the pressure relief valve or the  
20 charts?

21 A. Honestly, I don't know.

22 Q. Okay. And do you remember if you did on that  
23 following Tuesday talked to the inspector about the  
24 pressure relief valve or the charts?

25 A. Well, if they were still there, yes, I'm sure I

1 did. Yes.

2 Q. All right. Now, let's go back to when this  
3 valve goes off during the inspection. You recall  
4 it going on a Friday. And Mr. Kamholz turns to you  
5 about how long the valve has been there. And then  
6 you have to answer these questions.

7 A. Yes.

8 Q. You were at the time the supervisor of the  
9 by-products area?

10 A. Yes.

11 Q. The pressure relief valve was in the  
12 by-products area?

13 A. Yes.

14 Q. And it is one of your responsibilities to know  
15 about the operation of the different components  
16 that are in your area?

17 A. Yes, sir.

18 Q. And that includes the pressure relief valve --

19 A. Yes, sir.

20 Q. -- right?

21 Have you ever heard the -- I want to know if  
22 you agree with their expression, "With great power  
23 comes great responsibility."

24 MR. MANGO: Objection to the Spiderman  
25 quote, your Honor.

1 MR. PERSONIUS: I don't know if it's  
2 Spiderman.

3 MR. MANGO: Well, I know it is Spiderman,  
4 your Honor.

5 THE COURT: I think others do as well.

6 MR. PERSONIUS: I think it's a little  
7 older than that.

8 THE COURT: Well, you know --

9 MR. MANGO: Relevance, your Honor.

10 THE COURT: You mean the age of Spiderman,  
11 is that relevant or not? You know, on that  
12 grounds, I'll sustain the objection.

13 MR. PERSONIUS: Spiderman grounds?

14 THE COURT: Spiderman grounds.

15 MR. PERSONIUS: All right.

16 But you agree that, given your position as the  
17 head of by-products, it would not be unreasonable  
18 to expect that you would, as part of those  
19 responsibilities, be required to tell inspectors  
20 about the operation of a component within the unit  
21 that you're in charge of, right?

22 MR. MANGO: Objection, your Honor. Calls  
23 for speculation.

24 THE COURT: Can you answer that question?  
25 Do you remember it well enough to do that?

1 THE WITNESS: Could you repeat it?

2 MR. PERSONIUS: I'll try to.

3 THE COURT: Yeah, I mean, it's a little  
4 bit lengthy. So --

5 MR. PERSONIUS: Sure it is.

6 THE COURT: Repeat the question.

7 MR. PERSONIUS: I'm trying to do it a  
8 right way, but you're right, it is.

9 BY MR. PERSONIUS:

10 Q. You were the head of by-products, right?

11 A. Yes.

12 Q. PRV is within by-products?

13 A. Yes.

14 Q. Something you knew as much about as anybody in  
15 the plant, right?

16 A. Yes.

17 Q. And, therefore, to ask you to explain it to  
18 these inspectors, you have an objection to that?

19 A. No.

20 Q. Okay. And the information that you gave to the  
21 inspectors, was it accurate? Did you answer all  
22 their questions?

23 A. Yes.

24 Q. And did you answer them accurately?

25 A. To my knowledge, yes.



1 Q. Okay. And how you answered those questions was  
2 entirely left up to you, right?

3 A. Yes.

4 Q. Mr. Kamholz had not told you ahead of time what  
5 to tell these inspectors, right?

6 A. No.

7 Q. And as you're talking to the inspectors, he's  
8 not giving you signals about what you should say?

9 A. No.

10 Q. Everything you told the inspectors was left  
11 totally up to you?

12 A. Yes.

13 Q. Okay. Now, Mr. Mango asked you if at some time  
14 later that day you talked to two other employees,  
15 Mr. Brossack, who's testified here, and a gentleman  
16 named Mr. Priamo, about this series of events.

17 Do you remember that?

18 A. Yes.

19 Q. You told him that you did, right?

20 A. Yes.

21 Q. How much later in the day was that  
22 conversation?

23 A. I want to say 3:30, 4:00. Late evening.

24 Q. Okay. How many hours passed from this  
25 discussion you had with the inspectors until you

1       talked about it with Mr. Brossack and Mr. Priamo?

2       A.   Half hour, hour.

3       Q.   Half an hour to an hour later?

4       A.   Yes.

5       Q.   Okay. All right. And what you were feeling at  
6       that point in time was anger?

7       A.   Yes.

8       Q.   Okay.

9               MR. PERSONIUS: Your Honor, during a  
10       recess I would like to ask for permission for  
11       Mr. Cahill to go through this book. And I'd like a  
12       minute to talk to Mr. Kamholz to see if I have  
13       anything more to ask.

14              THE COURT: Okay. Certainly.

15              MR. PERSONIUS: We can take this off the  
16       screen too.

17              THE COURT: Done.

18              MR. PERSONIUS: Thank you, Judge.

19              THE COURT: All right. Everybody doing  
20       okay?

21              MR. PERSONIUS: Thank you, Mr. Cahill.  
22       Those are my questions for now, subject to the log  
23       book.

24              THE COURT: Okay. Give you time to take a  
25       break and go through the transcript. We'll resume

1 again at 11:30. Okay?

2 All right. Ladies and gentlemen, you're on  
3 your own, but in the care, custody, and control of  
4 Chris.

5 (Jury excused from the courtroom.)

6 THE COURT: Okay. You may step down.

7 Okay. We'll see you here about 11:30.

8 MR. MANGO: Judge, one point. I know you  
9 looked to me for this type of information. I think  
10 the source of that quote is Voltaire. I'm not  
11 positive, but I think it's Voltaire.

12 MR. PERSONIUS: I like Spiderman.

13 THE COURT: It's not to say Spiderman  
14 wasn't conversant with Voltaire.

15 MR. PIAGGIONE: Or that Spiderman was  
16 Voltaire.

17 THE COURT: Okay. I guess we'll leave it  
18 at that. Thank you.

19 (Short recess was taken.)

20 (Jury seated.)

21 THE COURT: Welcome back, ladies and  
22 gentlemen. Please have a seat. Okay. The  
23 attorneys and parties are back, present. The  
24 ladies and gentlemen of the jury are here. Roll  
25 call waived. And Mr. Robert Cahill remains under

1 cross-examination by Mr. Personius. And you are  
2 under oath, Mr. Cahill.

3 BY MR. PERSONIUS:

4 Q. During the break, Mr. Cahill, did you have a  
5 chance to go through the by-products log book  
6 that's marked as Government Exhibit 87?

7 A. Yes, I did.

8 Q. Did you find any other references to a change  
9 in the pressure for the --

10 A. One.

11 Q. You found one?

12 A. Yes.

13 Q. Okay. What page -- do you remember what date  
14 that was?

15 A. No, I don't.

16 Q. If I give it to you, would you be able to find  
17 it?

18 A. Yes, I think so.

19 MR. PERSONIUS: May I give it --

20 THE COURT: Let's put it up on the screen  
21 though.

22 MR. PERSONIUS: Also.

23 THE WITNESS: I think it was --

24 THE COURT: I'm sorry?

25 THE WITNESS: I think it was before that

1 one when they raised it to 100. I think it was the  
2 day before or two days before that. So whatever  
3 date that was.

4 MR. PERSONIUS: That date was 3/3/09.

5 THE COURT: Okay. March 3rd of '09.

6 MR. PERSONIUS: May I give it to him to  
7 look at?

8 THE COURT: Certainly. Give us the page  
9 number where you find that and we can put it up on  
10 the screen.

11 MR. PERSONIUS: Ninety-nine. That's the  
12 page number down here.

13 THE WITNESS: Yes, there it is.

14 BY MR. PERSONIUS:

15 Q. Okay. We have on the screen page 99 of  
16 Government Exhibit 87.

17 Can you show us where the entry is, please?

18 A. Yes. It's at the top, a note lower -- lowered  
19 bleeder to 94.

20 Q. Okay. All right. And that was the only other  
21 entry then?

22 A. That I seen. I looked through it pretty  
23 quickly.

24 THE COURT: Is that your writing or  
25 somebody else's?

1 THE WITNESS: That's not mine, no.

2 THE COURT: Thank you.

3 BY MR. PERSONIUS:

4 Q. Okay. So for the period that's covered by this  
5 log book, which would be January through April  
6 of 2009, you found a total of two entries?

7 A. Yes.

8 Q. Related to changing the pressure?

9 A. Yes.

10 Q. And I think you told us on direct that, when  
11 you would change the pressure, you did not make an  
12 entry in the log book, is that true?

13 A. That's true, yes.

14 Q. Okay. Thank you.

15 THE COURT: Okay. Mr. Personius, thank  
16 you.

17 Mr. Linsin.

18 MR. LINSIN: Thank you, your Honor.

19 THE COURT: You're welcome.

20 MR. LINSIN: Morning, Mr. Cahill.

21 May I proceed, your Honor?

22 THE COURT: You may.

23 CROSS-EXAMINATION BY MR. LINSIN:

24 Q. Mr. Cahill, I believe, if I heard your  
25 testimony correctly, it's your recollection that

1 the EPA inspection that you've been testifying  
2 about began on a Monday, is that correct?

3 A. Yes. Yes.

4 Q. All right. Is it fair to say that your memory  
5 may not be precise about that?

6 A. About the day?

7 Q. About the day of the week that the inspection  
8 began.

9 A. Yes.

10 Q. Could have been a Tuesday?

11 A. Yes.

12 Q. All right. You also testified about the  
13 frequency with which this pressure relief valve or  
14 bleeder valve released, correct?

15 A. Yes, I did.

16 Q. Is it accurate to say, Mr. Cahill, that the  
17 frequency of the time that that valve released  
18 varied depending on a number of different  
19 conditions in the plant?

20 A. Yes, that's true.

21 Q. And depending on the time of year?

22 A. Yes.

23 Q. And depending on the type of coke that was  
24 actually being produced in any given charge,  
25 correct?

1 A. Yes.

2 Q. Production levels at the plant had an influence  
3 as well, correct?

4 A. Yes, it did.

5 Q. And the production levels at the plant varied  
6 significantly over time, correct?

7 A. Yes.

8 Q. Okay. And so it's fair to say, isn't it, that  
9 the frequency with which this valve released varied  
10 significantly based on all the factors we've just  
11 discussed, correct?

12 A. Yeah.

13 Q. Okay. Now, the inspection that you testified  
14 about, the EPA inspection of April of 2009, do you  
15 recall, you yourself recall, interacting with those  
16 inspectors pretty much every day they were there?

17 A. Not every day, no. I had other things to do  
18 too, so --

19 Q. But in the -- in the first week they were  
20 there, do you recall interacting with them several  
21 days during that week?

22 A. Yes.

23 Q. All right. And is it -- in your interaction  
24 with them, you were in and around the by-products  
25 area answering questions about the equipment in



1       that area, the operations, and providing what  
2       information they might need, correct?

3       A.   Yes, sir.

4       Q.   And they were -- do you recall they were taking  
5       samples and testing equipment and inspecting  
6       equipment, correct?

7       A.   Yes, they were.

8       Q.   Now, you've testified that on the Friday of  
9       that week, Friday of the inspection, you recall  
10      being present there and you saw -- you and the  
11      others saw the pressure relief valve release at  
12      that point, correct?

13      A.   Yes.

14      Q.   Now, as best you recall, Mr. Cahill, was that  
15      the first time that week that you were with the  
16      inspectors in the by-products area that that valve  
17      released?

18      A.   Yes, I would say so.   Yes.

19      Q.   Could I -- may I please have Defendant's  
20      Exhibit FFFF, please.

21               THE COURT:   It may be published.   It's  
22      received.

23               MR. LINSIN:   Yes, thank you, your Honor.

24      BY MR. LINSIN:

25      Q.   You were asked some questions about this this

1 morning, this exhibit. Mr. Cahill, do you  
2 recognize this exhibit as depicting the coke oven  
3 gas line at Tonawanda Coke and the components that  
4 are in the by-products area that are connected to  
5 the line?

6 A. Yes.

7 Q. Now, we've talked -- you've testified a fair  
8 amount about the pressure in the coke oven gas  
9 line, correct?

10 A. Yes, sir.

11 Q. And is it accurate to say -- I want to hold  
12 that thought for a moment about the pressure in the  
13 coke oven gas line.

14 There are actually at least three different  
15 pressure components in this entire system. There  
16 is a back pressure on the ovens in the battery  
17 itself, which is to the right on this exhibit,  
18 correct?

19 A. Yes, sir.

20 Q. And then where the blue lines begin coming off  
21 of the battery there, from that point traveling in  
22 the direction of the arrows until you get to the  
23 exhausters in this location, the coke oven gas line  
24 is in suction, correct?

25 A. Yes, sir.

1 Q. And those exhausters suck the gas off of the  
2 battery, and -- and then on the other side push the  
3 gas through the remainder of this system, correct?

4 A. Yes, sir.

5 Q. And the pressure created by those exhausters  
6 pushes the gas through the remaining components in  
7 the by-products area, correct?

8 A. Yes.

9 Q. And then at least on this schematic, to the  
10 what is labeled the LBA or the light oil scrubber?

11 A. Yes.

12 Q. And then as it comes out of the light oil  
13 scrubber, the gas is headed back towards the  
14 battery, correct?

15 A. Yes.

16 Q. All right. Now, while we're on this point, the  
17 light oil scrubber at the time of the inspection in  
18 April of '09 had been deactivated, correct?

19 A. Yes, sir.

20 Q. Do you know why it was deactivated?

21 A. No. No, I don't.

22 Q. You were foreman of the by-products area during  
23 that time, and you're not sure why?

24 A. Yes. No.

25 Q. Do you recall it being --

1 MR. MANGO: Objection, your Honor. He  
2 doesn't know. Any question asked now is just  
3 putting words in the witness's mouth.

4 THE COURT: Yes. Unless it's refreshing  
5 his recollection --

6 MR. LINSIN: Just one question to see if  
7 it helps his recollection, your Honor.

8 THE COURT: Well, Mr. Mango?

9 MR. MANGO: I'm concerned about the  
10 question, your Honor. There's a different way to  
11 try to refresh his recollection.

12 THE COURT: I'm going to sustain the  
13 objection.

14 BY MR. LINSIN:

15 Q. The gas, after it goes through the light oil  
16 scrubber, travels again in the direction of the  
17 arrows.

18 A. Not so easy.

19 Q. No, and I've practiced.

20 Well, just to the right of the arrow I managed  
21 to create here, do you see a line that drops down  
22 from the overhead coke oven gas line?

23 A. Yes, I do.

24 Q. All right. In the vicinity of the green shed  
25 you've testified about, correct?

1 A. Yes.

2 Q. What is that line that drops down and travels  
3 back toward the battery?

4 A. That's the gas line going to the ovens to heat  
5 the ovens.

6 Q. Okay. And so the coke oven gas, after it goes  
7 through by-products, a main line is taken off, the  
8 off-take then for the batteries. And is that the  
9 primary source of fuel to heat the batteries to  
10 continue to make coke in the next charges?

11 A. Yes, it is.

12 Q. And you see the pressure relief valve where it  
13 is indicated on this diagram, correct?

14 A. Yes.

15 Q. And downstream of that pressure relief valve to  
16 the right along the way, does it -- does the coke  
17 oven gas line then travel to the boiler which is  
18 off of this diagram?

19 A. Yes.

20 Q. All right. And is the coke oven gas also used  
21 in the boiler?

22 A. Yes, it is.

23 Q. It's used to create steam for the entire plant,  
24 correct?

25 A. Yes.

1 Q. Do you recall it also being used to create  
2 electricity?

3 A. Yes.

4 Q. For the entire plant?

5 A. Yes.

6 Q. Did you -- are you familiar with the term  
7 "cogen" or "cogeneration"?

8 A. Yes, I am.

9 Q. All right. It's accurate to say, isn't it,  
10 that the coke oven gas that comes off of this  
11 battery during the coke production process is an  
12 extremely valuable and necessary component for this  
13 plant to remain in operation?

14 A. Yes, it is.

15 Q. And with regard to those three pressure areas  
16 that we talked about, the back pressure on the  
17 ovens, the suction in the early part of the line,  
18 and the positive pressure that you testified about  
19 in this latter portion of the coke oven gas line  
20 downstream of the exhausters, there is a need to  
21 coordinate with the people up on the battery and  
22 make adjustments in the set point for the pressure  
23 relief valve in order to maintain the safety and  
24 stability of this system, isn't there?

25 A. Yes, sir.

1 Q. And as a matter of fact, failure to do that  
2 could result in catastrophic injury or catastrophic  
3 damage to the plant, correct?

4 A. Yes.

5 Q. And let's talk for a moment about the oven  
6 reversals that you've testified about. The ovens,  
7 again, are over in the battery on the right-hand  
8 side of this diagram, correct?

9 A. Yes, sir.

10 Q. When the ovens reverse, is it accurate that the  
11 pressure -- I'm sorry -- the flow of gas in this  
12 portion of the coke oven gas line that is  
13 underground, that flow of gas is actually stopped  
14 for a short period of time, is that correct?

15 A. Yes.

16 Q. All right. And so for that intervening short  
17 period of time, that pressure backs up into the  
18 line back into the by-products area, correct?

19 A. Yes.

20 Q. And then as soon as the reversal, or as the  
21 reversal proceeds and flow continues, that  
22 momentary peak in pressure is relieved, correct?

23 A. Yes, sir.

24 Q. Okay. So when we're talking about a reversal  
25 having an effect on the pressure back in the line

1 on by-products, that's how it happens mechanically,  
2 correct?

3 A. Yes.

4 Q. Now, you testified on cross-examination that  
5 you understood that there were plans in place to  
6 deactivate this pressure relief valve, correct?

7 A. Yes, sir.

8 Q. And to make other adjustments so that this  
9 pressure relief valve would not have to be used any  
10 further, correct?

11 A. Yes.

12 Q. As the EPA inspection in April of 2009 was --  
13 as you learned about it, that this inspection was  
14 going to occur, did you understand that this  
15 inspection was going to be something that focused  
16 pretty directly on the operation of your department  
17 at this plant?

18 A. Yes.

19 Q. Is it fair to say that you kind of felt put on  
20 the spotlight, in the spotlight because this number  
21 of inspectors were coming from various parts of the  
22 country to come and see how you were doing your  
23 job?

24 A. Yes.

25 Q. Okay. And you -- and I believe you testified



1 on direct others in your department spent some time  
2 after you had talked to Mr. Kamholz during this  
3 walk-through, you spent some time working in the  
4 by-products area to help prepare the department for  
5 this inspection, correct?

6 A. Yes, sir.

7 Q. And you were following the guidance you had  
8 received from Mr. Kamholz about doing things to  
9 clean things up prior to the inspection, correct?

10 A. Yes.

11 Q. Now, there's been a lot of testimony about the  
12 pressure relief valve and the interactions about  
13 this valve during and just before this inspection.  
14 But you're aware, aren't you, that Tonawanda Coke  
15 and Mr. Kamholz are required to file reports to  
16 regulatory agencies on a fairly regular basis,  
17 correct?

18 A. I'm aware of that now, yes.

19 Q. Were you aware of it back prior to being plant  
20 manager?

21 A. No.

22 Q. If you can put yourself back in that position  
23 for just a moment, April of '09. My question for  
24 you, Mr. Cahill, is, were you aware in April of  
25 '09 that Tonawanda Coke and Mr. Kamholz had

1 prepared and submitted a report to the Department  
2 of Environmental Conservation for the State of New  
3 York and to EPA, a report that specifically  
4 notified those agencies that there was a pressure  
5 relief valve on the coke oven gas line at the  
6 Tonawanda plant? Were you aware that that  
7 notification had been sent?

8 MR. MANGO: Objection, your Honor. That's  
9 assuming facts not in evidence. That's not how the  
10 testimony has been.

11 THE COURT: No, but you can examine if you  
12 need to. I'll permit it.

13 Do you remember the question, right,  
14 Mr. Cahill?

15 THE WITNESS: No.

16 THE COURT: No, you don't?

17 MR. LINSIN: I will say it again.

18 THE COURT: We'll have to break it down a  
19 little bit.

20 BY MR. LINSIN:

21 Q. Back in April of 2009, before this EPA  
22 inspection, did you know that Tonawanda Coke and  
23 Mr. Kamholz had filed a document with the DEC, the  
24 Department of Environmental Conservation for New  
25 York, and EPA, notifying them that there was a

1 pressure relief valve on the coke oven gas system  
2 at the Tonawanda Coke plant? Were you aware of  
3 that?

4 A. To my knowledge, no. I can't remember that.

5 Q. All right. Because you weren't involved in  
6 preparing those reports at that time, and you were  
7 not aware that that report had been filed, correct?

8 A. Right.

9 Q. This pressure relief valve, you've seen some  
10 pictures up to now.

11 Could I please have Defendant's Exhibit QQQ.01  
12 in evidence, please.

13 Do you recognize this as a photograph of the --  
14 or a part of the by-products plant at Tonawanda  
15 Coke?

16 A. Yes, I do.

17 Q. And you see the pressure relief valve that  
18 you've testified about?

19 A. Yes.

20 Q. That pressure relief valve was in that -- that  
21 location during the April 2009 inspection, correct?

22 A. Yes, sir.

23 Q. And if I followed your testimony correctly  
24 yesterday, you recall -- having worked in  
25 by-products, you recall that sometime earlier there

1 had been a -- a different pressure relief valve on  
2 the same system in approximately the location --  
3 did I get that correct -- in approximately the  
4 location where this arrow is placed?

5 A. Yes, pretty close to it. Next to that big  
6 black mark on the gas line. Right there. Yeah.

7 Q. And do you recall when that change was made?  
8 Do you know when the pressure relief valve was  
9 moved?

10 A. No. Again, like I stated earlier, no, I don't.

11 Q. You don't know that even though you were  
12 working in the by-products area?

13 A. Yeah. No.

14 THE COURT: All right. Mr. Linsin, let me  
15 ask you this. In light of that line of  
16 questioning, we now have reference to two pressure  
17 relief valves, right?

18 MR. LINSIN: One at a time, I believe is  
19 the testimony, yes. There was testimony -- yes,  
20 that's correct.

21 THE COURT: All right. And earlier there  
22 was the objection by Mr. Mango to the fact that  
23 your question contained facts not in evidence,  
24 right? Do you remember that objection?

25 MR. LINSIN: I do remember the objection,

1 your Honor.

2 THE COURT: Okay. Was there evidence with  
3 respect to reports being filed with either EPA or  
4 DEC with respect to either one or both of those  
5 different valves that existed at different times?  
6 So far. Or were you connecting up? That's my --

7 MR. LINSIN: No, your Honor. We have had  
8 significant testimony about a HAP submission study  
9 that was filed by the company and Mr. Kamholz  
10 in 2003. It was referenced in the testimony of the  
11 last witness, Ms. Hamre. She was asked  
12 specifically about the very page on which this  
13 information was provided in that HAPs study. That  
14 was 2003, six years before the April 2009  
15 inspection.

16 THE COURT: Okay. Mr. Mango?

17 MR. MANGO: Yes, your Honor. My objection  
18 is the characterization of that as a notification.  
19 Mr. Carlacci testified that's not notification.  
20 Ms. Hamre didn't testify that was a notification.  
21 It was just simply a reference in a report  
22 regarding whether the company releases, you know,  
23 sufficient amounts of hazardous air pollutants.

24 THE COURT: So your objection related to  
25 the notification portion of the question, not with

1       respect to whether a report was, in fact, filed?

2               MR. MANGO: Right, your Honor. Yes, your  
3 Honor.

4               THE COURT: Okay. Then, my ruling will  
5 remain the same, and you may proceed.

6               MR. LINSIN: Thank you.

7 BY MR. LINSIN:

8       Q. Let me ask you this, and see if you can recall  
9 this. Do you know, based on your work in  
10 by-products, whether the PRV that is shown in this  
11 photograph right in this location, was that PRV in  
12 that location during 2003?

13       A. I want to say yes. Yes, it was in that  
14 location.

15       Q. Is it fair to say that's your best recollection  
16 as you sit here today?

17       A. Yes, it is.

18       Q. And is it also your best recollection that  
19 while there may have been a PRV at this second  
20 location you testified about, there were never two  
21 PRVs on this system, is that correct?

22       A. Right.

23       Q. It was in this place a few feet to the north on  
24 this line in years earlier, and then it was  
25 subsequently moved to its present location?

1 A. Yes.

2 Q. All right. Okay. Now, my question to you  
3 about this PRV, which you best -- you recall has  
4 been there at least since 2003 and for many years  
5 before, the entire time you've been in the  
6 by-products area, correct?

7 A. Yes.

8 Q. And when did you first start in the by-products  
9 area? '91?

10 A. Something like that, yes.

11 Q. Okay. Early '90s?

12 A. Yes.

13 Q. Fair enough?

14 A. Yeah.

15 Q. Is this valve and the vent that -- that extends  
16 up above the valve, is that valve and vent entirely  
17 visible as you walk down Broadway there?

18 A. Yes, it is.

19 Q. Is it open and obvious to anybody that might be  
20 walking through the by-products area?

21 MR. MANGO: Objection, your Honor.

22 THE COURT: Grounds?

23 MR. MANGO: Is it open and obvious to  
24 anyone else? That's calling for speculation. This  
25 witness said he could see it. I think that's the

1 substance of the --

2 THE COURT: Yeah, I'll allow it to stand,  
3 though.

4 BY MR. LINSIN:

5 Q. Is it open and obvious to anybody that would be  
6 walking through the by-products area?

7 A. Yes.

8 Q. You don't ever recall going up there and  
9 putting a shroud over that valve, do you?

10 A. No, sir.

11 MR. LINSIN: I have nothing further, your  
12 Honor.

13 THE COURT: Thank you. Okay, Mr. Linsin,  
14 thank you.

15 Any redirect?

16 MR. MANGO: Yes, your Honor. Thank you,  
17 your Honor. May I proceed?

18 THE COURT: You may.

19 REDIRECT EXAMINATION BY MR. MANGO:

20 Q. Good afternoon, Mr. Cahill.

21 Can you tell the jury, how do you feel about  
22 testifying here today?

23 A. Nervous, scared. I don't want to testify,  
24 but --

25 Q. Okay. So is this something you want to be



1 doing right now?

2 A. No.

3 Q. Okay. I want you to look at the ladies and  
4 gentlemen of the jury and I want you to tell them  
5 whether what you testified to on the direct  
6 examination is your truthful recollection of what  
7 happened.

8 MR. PERSONIUS: Your Honor, I object to  
9 that question. He's under oath.

10 THE COURT: Yeah. Sustained.

11 BY MR. MANGO:

12 Q. Prior to this April of 2009 conversation, the  
13 pre-inspection conversation you had, had Defendant  
14 Kamholz ever told you to adjust the bleeder before?

15 A. No.

16 Q. Had you not had the conversation with Defendant  
17 Kamholz before this inspection, would you have on  
18 your own raised the release set point for the  
19 bleeder?

20 A. No.

21 Q. When you did the walk-around with Defendant  
22 Kamholz, the pre-inspection walk-around, did he  
23 indicate to you any lack of knowledge of the  
24 by-products area?

25 A. No.

1 Q. And when Defendant Kamholz made reference to  
2 the bleeder and said, "We can't have that going off  
3 when they're here," did he indicate any lack of  
4 knowledge of the bleeder?

5 A. No.

6 MR. PERSONIUS: Your Honor, the question's  
7 unfair because -- I'm trying to think how I -- it  
8 assumes that there was some obligation to show  
9 knowledge, which there wouldn't have been, if that  
10 makes sense.

11 THE COURT: I'll sustain the objection to  
12 the form of the question.

13 MR. MANGO: When you did the walk-around  
14 with Defendant Kamholz, the pre-inspection  
15 walk-around, did he indicate any lack of knowledge  
16 of the bleeder?

17 MR. PERSONIUS: Same question. Same  
18 objection.

19 THE COURT: Sustained.

20 BY MR. MANGO:

21 Q. Do you have any doubts, Mr. Cahill, that  
22 Defendant Kamholz was telling you the bleeder had  
23 to be adjusted and not released during the  
24 inspection?

25 A. No.

1 Q. You have no doubts?

2 A. Right.

3 MR. MANGO: Your Honor, if I can have one  
4 moment.

5 THE COURT: Yes.

6 MR. MANGO: I'm all set, your Honor.

7 Thank you. Nothing further.

8 THE COURT: Okay. Would you like to go?

9 THE WITNESS: Yes.

10 THE COURT: All right. Be gone.

11 THE WITNESS: Thank you.

12 THE COURT: All right. Thank you very  
13 much.

14 All right. Next government witness, please.

15 MR. PIAGGIONE: Your Honor, if the Court  
16 allows, I would put on the next witness. We would  
17 ask for Peter Dolan as our next witness, your  
18 Honor. D-O-L-A-N.

19 THE COURT: Ladies and gentlemen, I stand  
20 corrected.

21 You can come up, and we'll have you sworn as a  
22 witness.

23 I've been referencing Mr. Cahill as Robert. It  
24 is Patrick Cahill, it's my understanding now. All  
25 right. So it's my correction, please. All right.

1       Okay.

2       P E T E R     M A T T H E W     D O L A N, having been  
3       duly sworn as a witness, testified as follows:

4               THE COURT:   Good afternoon.

5               THE WITNESS:  Good afternoon, your Honor.

6               THE COURT:   Okay.  I have a couple of just  
7       preliminary instructions for you.  I'm going to ask  
8       you to speak in a conversational tone at the  
9       microphone.  You have to get a little bit closer  
10      than that, but you don't have to be right on top of  
11      it, okay, because then it distorts.

12              And what I'd like you to do as far as the  
13      questions are concerned, if you don't understand  
14      the question, let whoever's asking the question  
15      know, so that he or she can rephrase it.

16              Be as directly responsive to the questions as  
17      you can.  Don't volunteer information, because that  
18      usually complicates things.

19              THE WITNESS:  Okay.

20              THE COURT:   If you can answer a question  
21      yes or no, keep that in mind, try to do that.

22              THE WITNESS:  Okay.

23              THE COURT:   If there's an objection -- and  
24      attorneys on occasion will object.  If there's an  
25      objection, wait until I rule on the objection.

1 Don't continue on. Then I'll tell you what to do,  
2 either continue with the answer, wait for another  
3 question, or I'll give you some other instructions.  
4 Is all of that clear?

5 THE WITNESS: Yes.

6 THE COURT: Okay. And remember you're  
7 here to testify for the benefit of the ladies and  
8 gentlemen of the jury, so if you could direct your  
9 answers to them, that would be helpful whenever you  
10 can. Okay?

11 THE WITNESS: Yes, sir.

12 THE COURT: All right. State your full  
13 name; spell your last name. Move up a little bit  
14 towards the microphone and spell that last name,  
15 please.

16 THE WITNESS: Peter Matthew Dolan.  
17 D-O-L-A-N.

18 THE COURT: Okay, Mr. Dolan, thank you.  
19 Your witness, Mr. Piaggione.

20 MR. PIAGGIONE: Thank you, your Honor.

21 DIRECT EXAMINATION BY MR. PIAGGIONE:

22 Q. Mr. Dolan, where are you employed?

23 A. Self-employed.

24 Q. Okay. How long have you -- was there a time  
25 that you were employed at Tonawanda Coke --

1 A. Yes.

2 Q. -- Corporation?

3 All right. Just wait until I ask the question  
4 before you answer. Just slow down.

5 And when were you employed there?

6 A. Roughly 2005 till around 2008.

7 Q. Okay. In what capacity?

8 A. I started out in brick shop, and was then  
9 promoted up to general foreman on the battery.

10 Q. Okay. And when did you start working on the  
11 battery?

12 A. I believe, the end of 2005, maybe beginning  
13 of 2006.

14 Q. Okay. And what were your duties as a general  
15 foreman?

16 A. Keep the body -- or keep the battery  
17 operational, on schedule.

18 Q. And does the back pressure have any relevance  
19 to the operation of the battery?

20 A. Yeah.

21 Q. Okay. What -- what impact does it have?

22 A. It keeps an amount of gas on the battery.

23 Q. Okay. And do you recall what the setting was  
24 of the back pressure when you started working on  
25 the battery?

1 A. Not a hundred percent sure, but roughly around  
2 5 or 6.

3 Q. Okay. And do you know what a stack meeting is?

4 A. Yeah.

5 Q. What is that?

6 A. It's basically we're supposed to have a monthly  
7 general foreman and any foreman associated with the  
8 battery and our -- our immediate supervisors, the  
9 owner, and I believe that was it. So just -- just  
10 small meetings.

11 Q. Okay. And did there come a time while working  
12 on the battery that you had a stack meeting where  
13 the issue of setting of the back pressure was  
14 discussed?

15 A. Yes.

16 Q. Okay. And approximately when was that?

17 A. I believe, about a year before I left, so 2007,  
18 2008, somewhere in there.

19 Q. All right. And was it proposed in that meeting  
20 that the back pressure be raised in the battery?

21 A. Yes.

22 Q. And what was the purpose of raising the back  
23 pressure in the battery?

24 A. To supposedly build carbon in the ovens to  
25 seal -- seal the inside of the oven better.

1 Q. Okay. And as a result of the stack meeting,  
2 did you begin to raise the back pressure on the  
3 battery?

4 A. Yes.

5 Q. And was that raised over time or all at once?

6 A. Was it raised over time?

7 Q. Yes.

8 A. Yes.

9 Q. Okay. And over time how high did it get?

10 A. 9 or 10.

11 Q. Okay. And do you know what a 303 inspection  
12 is?

13 A. Yes.

14 Q. Okay. Did 303 inspections occur while you were  
15 working at Tonawanda Coke Corporation?

16 A. Yes.

17 Q. And once the back pressure started to be  
18 raised, what practice, if any, would you follow  
19 before a 303 inspection?

20 A. We'd lower the back pressure.

21 THE COURT: All right. Let me ask you  
22 this. What did you understand a Section 303  
23 inspection to be?

24 THE WITNESS: Do you want me to tell you  
25 exactly what the inspection was?



1 THE COURT: What you understood it to be,  
2 yes.

3 THE WITNESS: The 303 inspector would show  
4 up. He would do a visual inspection of the  
5 battery, basically counting the leaks and  
6 everything like that. He would also inspect five  
7 charges and count leaks during that, and then he  
8 would also -- as far as the battery was concerned,  
9 I think he would also just walk the main afterwards  
10 and everything like that and check for any leaks on  
11 the battery, basically, so --

12 THE COURT: All right. You wouldn't do  
13 that. That's an inspector's function?

14 THE WITNESS: Yes. Yes.

15 THE COURT: Thank you.

16 THE WITNESS: Well, I mean, I would pick  
17 him up. When he -- when he got to the battery, he  
18 had to change out of his civilian clothes, put, you  
19 know, greens on. I would pick him up, bring him up  
20 to the battery, and then he would, you know,  
21 commence with the inspection.

22 THE COURT: Okay. Thank you.

23 MR. PIAGGIONE: Your Honor, you just  
24 eliminated half my direct.

25 THE COURT: Okay. I'm sorry. I didn't

1 realize you were getting to that.

2 MR. PIAGGIONE: It's okay.

3 BY MR. PIAGGIONE:

4 Q. Lets see. How would you know when a 303  
5 inspection was going to occur?

6 A. The security at the front would give us a call  
7 and tell us the inspector is here.

8 Q. Okay. And what would that mean in terms of  
9 time?

10 A. Probably give us 20 minutes or so to have our  
11 final touches and everything ready for the  
12 inspection.

13 Q. Okay. And those final touches, what would that  
14 include?

15 A. If the back pressure wasn't already lowered by  
16 that point, it would be lowered, and the battery  
17 would be sealed up.

18 Q. And how many times did you personally adjust  
19 the back pressure when you were there?

20 A. I couldn't recall how many times, but I've done  
21 it.

22 Q. All right. How many times did you tell others  
23 to do it?

24 A. Pretty much every -- any time I was on nights.

25 Q. Okay. And do you recall what the pressure

1 setting was set at during the 303 inspections?

2 A. Like I told you before, I don't remember the  
3 exact setting on the manometer, what it is, but  
4 roughly two whatever units it is less than what it  
5 was at.

6 Q. So if it was at an 8?

7 A. It would be set down to roughly around 6.

8 Q. Okay. And what would happen to the back  
9 pressure settings when the 303 inspector left?

10 A. Then you raise it back up, put it back to where  
11 it was supposed to be.

12 Q. So the only purpose of lowering the back  
13 pressure was for the 303 inspection?

14 A. Yes.

15 Q. To prevent the detection of leaks?

16 MR. PERSONIUS: Your Honor, it's leading.

17 THE COURT: I'm sorry?

18 MR. PERSONIUS: Object to it. It's  
19 leading. Leading question.

20 THE COURT: It is. Sustained.

21 BY MR. PIAGGIONE:

22 Q. So, what was the purpose of raising and  
23 lowering the back pressure for a 303 inspection?

24 A. To seal the battery.

25 Q. And what effect would that have on the

1 inspection by the 303 inspector?

2 A. It would pass.

3 Q. By "pass," you mean what?

4 A. We're only allowed a certain rolling average  
5 of leaks on the battery. From what I recall, it  
6 was a 30-day rolling average or whatever. So, you  
7 know, your amount of doors or your amount of leaks  
8 on the lids or offtakes or anything like that, they  
9 would all have to be within a certain amount of  
10 leaks daily.

11 Q. So lower the number -- by lowering the back  
12 pressure, you would lower the number of leaks to be  
13 detected?

14 A. Yes.

15 Q. Incidentally, what were the circumstances under  
16 which -- am I going too fast? I'll slow down  
17 again.

18 What were the circumstances under which you  
19 left Tonawanda Coke Corporation?

20 A. I was laid off when they -- when I was there,  
21 most of the time it was during a large oven  
22 schedule, up to 50 ovens a day, and then during the  
23 cutback they went down to, I don't know, like 20 or  
24 something like that, so --

25 Q. Okay. Incidentally, do you know the difference

1       between foundry and furnace coke?

2       A.   Not really.

3       Q.   Do you know what the impact of foundry or  
4       furnace coke has on the battery operation?

5               MS. GRASSO:  Objection, your Honor.  He  
6       said he didn't know.

7               MR. PIAGGIONE:  Your Honor, first of  
8       all --

9               THE COURT:  There was a voice I didn't  
10      recognize.  Where did that come from?

11              MS. GRASSO:  I'm debuting today.  Thank  
12      you.

13              THE COURT:  I mean, all I recognize from  
14      you are sneezes and coughs.

15              Okay.  Is this going to be your witness?

16              MS. GRASSO:  Yes.  Yes, your Honor.

17              THE COURT:  Okay.  All right.  Sustained.

18              MR. PIAGGIONE:  Then I'll rephrase the  
19      question, your Honor.

20   BY MR. PIAGGIONE:

21      Q.   What was the impact of making foundry or  
22      furnace coke, if any, upon the battery?

23      A.   I just know it was two different types of coke.  
24      We had to keep it separate.

25      Q.   Does the foundry or furnace coke have any

1 impact on the smoke that's produced?

2 MS. GRASSO: Objection, your Honor. He  
3 just said he didn't know.

4 MR. PIAGGIONE: Different question, your  
5 Honor.

6 THE COURT: All right. Let the question  
7 be complete, and then you wait, please, Mr. Dolan,  
8 and I'll rule on the objection if there is one.  
9 Okay.

10 BY MR. PIAGGIONE:

11 Q. What does the impact -- withdrawn.

12 With respect to smoke that is -- is smoke  
13 produced as part of coke production?

14 A. Yes.

15 Q. Okay. Does the production of foundry or  
16 furnace coke have an impact upon the amount of  
17 smoke that's produced during coke production?

18 THE COURT: If you know.

19 MR. PIAGGIONE: If you know. Thank you.

20 THE COURT: Do you know?

21 THE WITNESS: I understand what you're  
22 asking. Generally, what we call in the furnace --  
23 or furnace coke would produce more gas.

24 BY MR. PIAGGIONE:

25 Q. And which one would produce more smoke?

1 A. Gas, smoke, same thing.

2 Q. Okay. I just want to make sure I understand  
3 your answer. Okay.

4 And in general, when was furnace coke produced  
5 at the battery?

6 A. When was it charged?

7 Q. Yes. Either -- was it day or night?

8 A. No, it was charged --

9 THE COURT: Okay. Put a question in  
10 there, because it's -- you're missing connection  
11 here.

12 MR. PIAGGIONE: Okay. I'm sorry, your  
13 Honor.

14 BY MR. PIAGGIONE:

15 Q. In general, was furnace coke produced during  
16 the day?

17 A. No.

18 Q. When was it produced?

19 A. Well --

20 Q. Usually.

21 A. -- I -- I mean, I -- I don't want to ask you  
22 how to tell -- ask the question, because it was --  
23 coke goes into the oven, it gets cooked for 30  
24 hours. It's being produced all the time. Did it  
25 come out? Was it pushed during the day? Yes. Was

1 it -- it was charged at night, roughly.

2 Q. Was charging when the smoke was produced? Is  
3 that the procedure in which the smoke was produced?

4 A. The procedure during the charging, yes.

5 Q. Okay. And so was the charging for furnace coke  
6 done at night?

7 A. Yes.

8 Q. Was that the usual practice?

9 A. I didn't make the schedule, but yes.

10 Q. Okay. You don't know why that was done,  
11 however?

12 A. Like I said, I didn't make the schedule.

13 MR. PIAGGIONE: Okay. No further  
14 questions, your Honor.

15 THE COURT: Okay. Miss Grasso,  
16 cross-examination?

17 MS. GRASSO: Yes.

18 CROSS-EXAMINATION BY MS. GRASSO:

19 Q. Good afternoon, Mr. Dolan.

20 A. Good afternoon.

21 Q. My name is Jeanne Grasso, and I am counsel for  
22 Tonawanda Coke. On direct you testified that your  
23 responsibilities as general foreman were to make  
24 sure the battery was operational, is that right?

25 A. Yes.



1 Q. And did those responsibilities include sealing  
2 the battery before charges?

3 A. Before charges?

4 Q. After charges. I'm sorry.

5 A. After charges, yes.

6 Q. Yes. And can you describe what that involved?

7 A. There is a mud bin in the back of the battery  
8 on the top of the scale floor, that you'd have to  
9 make sure mud was pumped up in there, and it was --  
10 tell you the truth, I don't know what it was for,  
11 but it was used for sealing the lids and offtakes  
12 and the whole top of the battery.

13 Q. Okay. So the lids were sealed?

14 A. Yes.

15 Q. The offtakes were sealed?

16 A. Yes.

17 Q. Were the goosenecks sealed as well?

18 A. Yes. Anything leaking on top of the battery  
19 needed to be sealed.

20 Q. So sealing the battery was important, is that  
21 right?

22 A. Yes.

23 Q. And the purpose of sealing was to reduce  
24 visible emissions, is that right?

25 A. Yes.

1 Q. And there were independent inspectors that were  
2 there on a daily basis to monitor those emissions,  
3 right?

4 A. Yes.

5 Q. Okay. You testified on direct that a -- at a  
6 stack meeting there was a company directive to  
7 increase the back pressure, correct?

8 A. Yes.

9 Q. And that this --

10 A. Well, I don't know about a company directive,  
11 but it was brought to our attention that they were  
12 raising the back pressure.

13 Q. Okay. And that was done on an incremental  
14 basis, right?

15 A. Yes.

16 Q. Over a fairly long period of time?

17 A. Yes, I -- I guess.

18 Q. That it was a slow increase. It wasn't from 5  
19 or 6, that you testified was normal, to 10?

20 A. They changed it all the time. A lot of times  
21 we would come in, and in our office it would just  
22 be written on a pad of paper, and that was it.  
23 Back pressure is now at -- dut -- and that was it.  
24 Leave it.

25 Q. Okay. And when the back pressure was

1 increased, it created challenges, didn't it, for  
2 the workers on the battery?

3 A. It's impossible to seal. I mean, it got to a  
4 point --

5 Q. It made more work for you, then, correct?

6 A. Whether it's work or not, it was impossible.  
7 I'll just say yes. Yes. It made more work.

8 Q. And that personnel resisted these efforts,  
9 correct?

10 A. No.

11 Q. No?

12 A. No. No. I don't think there was any  
13 resistance.

14 Q. Okay. You testified that you lowered the back  
15 pressure yourself, correct?

16 A. Yes.

17 Q. And roughly how many times did you do that?

18 A. I don't know. It was -- it was done every  
19 single night, whether I did it or not.

20 Q. And whose -- who made the determination to do  
21 that? Was it you as the foreman?

22 A. That's what we were taught to do.

23 Q. By who?

24 A. When I -- I probably worked with a numerous  
25 different amount of foremen in training, and the

1 head heater was training me. Plant manager had to  
2 do with my training. Extra foremen on the battery  
3 had to do with my training.

4 Q. So you said it made more work for you on the  
5 battery. And did this cause you to cut corners?

6 A. To?

7 Q. To not seal like you should have sealed the  
8 battery?

9 A. We always sealed the battery for inspection.

10 Q. Excuse me one second.

11 Is it true, Mr. Dolan, that there were  
12 occasions when you did not seal the battery in the  
13 evenings?

14 A. Pardon?

15 Q. Are there occasions when you did not do proper  
16 sealing of the battery in the evenings?

17 A. We always sealed the battery. I mean, it was  
18 only done to a point unless it was an inspection  
19 time, and then that's when everything was sealed.  
20 But, no, we didn't let just smoke fly all over the  
21 place, because that's -- you can't see.

22 Q. One moment, please.

23 Mr. Dolan, can you please describe how you  
24 would typically seal or maintain the lids or the  
25 doors prior -- after a charge? I'm sorry.

1 A. After a charge, the charge car operators would  
2 put the lids back on the oven and seal them all  
3 with buckets that are hanging from the charge car.

4 Q. And were you required to do any maintenance on  
5 those to make sure that the leaks were sealed?

6 A. Maintenance on what?

7 Q. Cleaning the doors, cleaning the gaskets,  
8 ensuring that they were working properly so there  
9 wouldn't be visible emissions.

10 A. Yeah. Any doors that were -- you schedule as  
11 many doors as you can to get gasketed, and when  
12 they're bad they get put on a schedule and they get  
13 gasketed. They go down to the door room prior to  
14 the oven being charged, and they change the gasket  
15 on the door.

16 Q. Okay. So, Mr. Dolan, it's clear to you that in  
17 these stack meetings the company requested,  
18 recommended, directed, however you put it, that the  
19 back pressure be raised to seal leaks, is that  
20 correct?

21 A. Yes.

22 Q. And you did not do that, did you? You did not  
23 maintain the back pressure as it was supposed to be  
24 maintained, did you?

25 A. No.

1 Q. You lowered it on your own, is that correct?

2 A. It's been -- like I said, it didn't matter who  
3 did it. It was done every day.

4 Q. Did you lower the back pressure on your own,  
5 knowing that the inspectors were coming?

6 A. Yes.

7 Q. Thank you. In your experience on the battery,  
8 Mr. Dolan, did you come to be familiar with the  
9 quench cars?

10 A. Yes.

11 Q. And what was the purpose of the quench towers?

12 A. To cool down the coke.

13 Q. How many were there?

14 A. Two different towers.

15 Q. Was one used more often than the other?

16 A. At times there was only one working.

17 Q. And do you know which tower that was?

18 A. You know what, I forget the names, which one's  
19 which. Yeah.

20 Q. If I were to say there was an east and west  
21 quench tower, would that refresh your memory?

22 A. It would refresh my memory, but honestly, to  
23 tell you the truth, it's been so long, I don't  
24 remember which one was the east and which one was  
25 the west. I could picture myself standing on the

1 battery, and I could point to you which tower we  
2 used more, but I don't remember what that was  
3 called.

4 Q. Do you remember them being called Tower 1 and  
5 Tower 2?

6 A. Yes.

7 Q. Do you remember which one was used more, if  
8 they were called Tower 1 and Tower 2?

9 A. Whatever you call it, I don't -- like I said, I  
10 know which tower was used. I don't know -- I don't  
11 remember what it was called. It's been a while.

12 Q. Was there a tower near the river?

13 A. The river. No. I think it was the one further  
14 from the river.

15 Q. Okay. Which tower -- do you remember, when you  
16 were being interviewed by the government, that you  
17 noted that one of the towers did not work half the  
18 time you were employed by TCC?

19 A. I just remember doing that with you now.

20 Q. I'm sorry? I'm asking you about your interview  
21 with the government last month.

22 A. Oh, okay.

23 Q. Do you remember stating that one of the towers  
24 did not work half the time during your employment  
25 at TCC?

1 A. Whether I said half the time or what, yes.

2 There was times that only one tower was  
3 operational.

4 Q. Okay. And then when the -- when both towers  
5 were operational, is it true that you stated that  
6 it was used -- Quench Tower 1 was rarely used?

7 A. Wintertime it needed -- wintertime you had to  
8 use them both, because you had to keep the tracks  
9 clear. I mean, yes, we used one tower more often  
10 than the other, yes. And at times when the other  
11 tower was shut down, we used the other -- the  
12 opposite tower more frequently.

13 Q. Okay. Are you able to put a percentage of  
14 time, roughly, that you used those towers or no?

15 A. No.

16 Q. Okay. But one was clearly used more than the  
17 other?

18 A. Yes.

19 Q. And you do not -- do you know -- one was  
20 clearly used more than the other. Does it ring a  
21 bell for you --

22 MR. PIAGGIONE: Your Honor, I'm going to  
23 object. We've listened to this. This is beyond  
24 anything -- beyond the scope of direct. He was  
25 just talking about raising and lowering the back



1 pressure. Now we are talking about quench towers.  
2 I let it go for a while, but it's continuing on  
3 this way. It's way beyond direct, your Honor.

4 THE COURT: Yeah. Why isn't it beyond the  
5 scope?

6 MS. GRASSO: Yes, I understand, your  
7 Honor. We're -- the government knew the witness  
8 had information on this topic, and we were trying  
9 for the sake of efficiency not to have to call him  
10 back to testify on quench towers. I'm done.

11 THE COURT: Okay.

12 THE WITNESS: Well, if it's for the sake  
13 of efficiency, I don't really want to come back.  
14 I'm telling you right now.

15 THE COURT: Well, if we don't bring you  
16 back, it is more efficient. I mean, just so you  
17 know.

18 THE WITNESS: All right.

19 THE COURT: All right. But I think you  
20 have to be cross-examined by Mr. Personius if -- if  
21 you'd like to do that, Mr. Personius.

22 CROSS-EXAMINATION BY MR. PERSONIUS:

23 Q. Good afternoon.

24 A. Good afternoon.

25 Q. My name is Rod Personius, and I represent Mark

1 Kamholz.

2 Your testimony on cross was that something was  
3 done all the time. Do you remember testifying to  
4 that?

5 A. Yes. Something regarding what?

6 Q. That's what I'm wondering. You said several  
7 times it was done all the time, and is it your  
8 testimony that the -- the back pressure was lowered  
9 all the time? Is that what you were saying?

10 A. Prior to 303 inspection, yes.

11 Q. Okay. And did you work at Tonawanda Coke every  
12 day --

13 A. No.

14 Q. -- of every month of every year?

15 A. No.

16 Q. Okay. And so I think the jury needs to know  
17 what the basis is for you testifying that the back  
18 pressure was lowered all the time.

19 MR. PIAGGIONE: Your Honor, he's already  
20 testifying that when he was working there, when he  
21 was the battery operator.

22 THE COURT: No. The witness can answer  
23 the question. Thank you. Overruled.

24 THE WITNESS: I think I know what you're  
25 looking for, so I'll just come out and say it. It

1 doesn't matter whether I was working nights. If I  
2 was working nights, it would probably be lowered  
3 right before daylight, because that's roughly when  
4 the 303 inspection would occur. After daylight,  
5 okay. Now, if I was coming in on day shift, the  
6 back pressure would already be lowered for me if  
7 the sun was up. So, obviously, I did not lower it,  
8 no, but it was already lowered prior to my coming  
9 to work.

10 BY MR. PERSONIUS:

11 Q. Okay. And so you're telling us that -- that  
12 there were occasions when you would lower the back  
13 pressure.

14 A. If I was working nights prior to sunrise, yes.

15 Q. Okay.

16 A. Only when I was working nights would I ever  
17 lower the back pressure.

18 Q. Okay. And you were doing this even after this  
19 meeting took place that said to raise the back  
20 pressure?

21 A. Yes.

22 Q. Okay. And your -- what is -- what was your  
23 reason for lowering the back pressure if you  
24 attended a meeting where you were told to gradually  
25 raise the back pressure?

1 A. Because we were still told to lower it for  
2 inspection.

3 Q. Okay.

4 A. Not during the meeting, but we were still told.

5 Q. So, now what we need to find out is -- you say  
6 "we were told." Now, when you say "we were told,"  
7 who in addition to yourself was told this?

8 A. All the foremen.

9 Q. Could you identify them?

10 A. Any general foreman on the battery. There's  
11 been numerous ones. I was only there for a couple  
12 of years, but they changed them all the time.

13 Q. Okay. Can you remember -- when you say "we,"  
14 it would be helpful for us to know who you're  
15 referring to. Do you remember their names?

16 A. Yes.

17 Q. Okay.

18 A. Some of them.

19 Q. And why don't you tell us who they are, please.

20 A. I might not even know full names, but, I mean,  
21 we're talking -- Joe was a foreman when I was  
22 there; Frank was a foreman when I was there; Justin  
23 was a foreman when I was there. I don't remember  
24 his first name, but Bowen was a foreman when I was  
25 there.

1 Q. Bowen?

2 A. Bowen, yeah. I'm probably missing others.

3 Q. Okay. And were you present when these people  
4 that you've identified were told to lower the back  
5 pressure?

6 A. When they were told, no, but we would talk.

7 Q. Okay. So the testimony you're giving to the  
8 jury is based on what you were told -- or telling  
9 us you were told by these other foremen?

10 MR. PIAGGIONE: Objection, your Honor.  
11 Again, he already testified that when he was not  
12 working nights he would come in and the back  
13 pressure had been lowered.

14 THE COURT: We heard the testimony.  
15 What's your objection?

16 MR. PIAGGIONE: Well, he's indicating  
17 something that's not in evidence.

18 THE COURT: Okay.

19 MR. PIAGGIONE: It's not the testimony of  
20 the witness.

21 THE COURT: Okay. Overruled. You may  
22 continue, please.

23 BY MR. PERSONIUS:

24 Q. Do you need the question repeated?

25 A. Yes.

1 Q. So that the jury understands, when you say that  
2 these other foremen were told this, that's based on  
3 you recollecting what you say these other foremen  
4 told you, right?

5 A. Yes.

6 Q. Okay. So why --

7 A. Plus, I was told myself, by my superiors.

8 Q. Well, that's what I want to get to. I'd like  
9 to explore a little bit what you recall you were  
10 told and by whom. Okay?

11 A. Uh-huh.

12 Q. Now, your testimony is you were told -- after  
13 this meeting about raising the back pressure, you  
14 were still being told to lower the back pressure,  
15 correct?

16 A. Uh-huh.

17 Q. Yes?

18 A. Yes.

19 Q. Okay. And the reason you need to do that --

20 A. Only for 303 inspection purposes. Other than  
21 that, the battery stayed at the same back pressure.

22 Q. Okay. You need to say yes.

23 A. I did say yes.

24 Q. I don't want you to get aggravated. I want you  
25 to understand why.

1 THE COURT: No, here's the thing,  
2 Mr. Dolan. When you say uh-huh, it's difficult for  
3 my court reporter to take that down. Uh-huh is  
4 sometimes tough to spell, depending. All right.  
5 So if you say yes, it makes it much clearer, much  
6 easier. Okay?

7 THE WITNESS: Okay.

8 THE COURT: Thank you.

9 BY MR. PERSONIUS:

10 Q. I'm not trying to give you a hard time.

11 Now, your testimony is that someone at  
12 Tonawanda Coke was giving you this instruction for  
13 303 inspections to lower the back pressure,  
14 correct?

15 A. Yeah.

16 Q. And do you remember the first time when you  
17 were told that?

18 A. No.

19 Q. Okay. And do you remember who told you?

20 A. Been told by numerous people, because every  
21 time they would raise it we would ask, "Are we  
22 still lowering it for inspection?" We would ask  
23 whoever our, you know, in charge of the battery at  
24 the time if we were still lowering it. So --

25 Q. Are you done?

1 A. Yes.

2 Q. Okay.

3 MR. PERSONIUS: Am I doing it again?

4 Okay.

5 (Court reporter equipment malfunction.)

6 THE COURT: Will you try some tests,  
7 please?

8 Okay. Thank you.

9 Mr. Personius, you may continue, please.

10 BY MR. PERSONIUS:

11 Q. Mr. Dolan, what I want to find out is your  
12 recollection of who it was at Tonawanda Coke who  
13 told you to lower the back pressure, okay. So  
14 that's the focal point of this.

15 A. Okay.

16 Q. And I asked you if you remember when the first  
17 time was that you were told, and you don't recall  
18 that, correct?

19 A. No.

20 Q. Okay. Let's go at it this way. Do you  
21 remember how many times you were told to lower the  
22 back pressure?

23 A. Pretty much it was any time they raised it,  
24 just to make sure we were still doing our normal  
25 procedure.



1 Q. Okay. How many times -- let's go at it this  
2 away then. You say almost every time that you were  
3 told to raise it you were told to lower it. Now,  
4 how many times were you told to raise it?

5 A. Well, like I said, any time -- we would just  
6 come in and it would be on our pad. Just -- I  
7 mean, it wasn't always just at a meeting. We only  
8 had meetings once in a while, and any time we came  
9 in to work they would tell us what the back  
10 pressure was at.

11 Q. Well, let's -- let's try to go at it this way.  
12 The meetings that you're referring to, are these  
13 the stack meetings?

14 A. Yes.

15 Q. Okay. How many stack meetings did you attend?

16 A. I'm not sure. For a while they weren't having  
17 them, and when they did start having them again, we  
18 had them -- we had them monthly.

19 Q. Okay. I understand when you had them. My  
20 question is, how many did you attend?

21 A. Any one that I had to.

22 Q. How many did you have to attend, sir?

23 A. I don't know.

24 Q. Did you attend more than one?

25 A. Oh, yes.

1 Q. How many?

2 A. As many as -- I don't recall.

3 Q. Okay. All right. One, but you don't know how  
4 many more than one?

5 A. Definitely more than one, probably less than  
6 ten. I don't know. Maybe. Maybe more.

7 Q. Go at it this way. How many meetings did you  
8 miss?

9 A. I didn't miss any. If I was required to be  
10 there, I went.

11 Q. So you didn't miss a single stack meeting?

12 A. While I was required to be there, I did not  
13 miss a meeting.

14 Q. Lets get back if we can, again, to who told you  
15 that you were supposed to lower the back pressure.  
16 Can you tell us who that was, please?

17 A. It was whoever -- whoever I was working for at  
18 the time. It could have been Frank; it could have  
19 been Tony; it could have been Gerry. Anyone.

20 Q. Okay. So you told us Frank, Tony, and Gerry.

21 A. Yeah. And also we were also told by word of  
22 mouth -- that's how we were required to report when  
23 we came on shift, you know, what's going on. You  
24 know, I have to relieve my other foreman. There's  
25 always a foreman on the battery at all times. So

1       when I got to work, I would show up, I would ask  
2       the other foreman what's going on, and if that was  
3       brought up -- it was always a question if you're  
4       getting there in the morning, what's the back  
5       pressure at and what's it at now. It was always a  
6       question brought up.

7       Q. Are you done?

8       A. Yes.

9       Q. Okay. Frank. What's Frank's last name?

10      A. Not sure. I think -- I think -- I think it's  
11      Gonzalez.

12      Q. Frank Gonzalez. So your testimony is that  
13      Frank Gonzalez told you to lower the back pressure?

14      A. Has told me, yes.

15      Q. How many times did Mr. Gonzalez tell you to  
16      lower the back pressure?

17      A. I'm not sure. I don't remember.

18      Q. More than once?

19      A. Yes.

20      Q. More than five times?

21      A. I'm not sure.

22               MR. PIAGGIONE: Objection, your Honor.

23      He's already asked and answered the question. Now  
24      we're just repeating it three times now.

25               THE COURT: Well, this has become more

1 specific. I'll allow it, and we'll move on.

2 Overruled.

3 BY MR. PERSONIUS:

4 Q. More than five times?

5 A. I'm not sure. I know more than once, but I  
6 don't know any more than that.

7 Q. All right. And then you mentioned Tony.  
8 What's Tony's last name?

9 A. Brossack.

10 Q. So Tony Brossack told you to lower the back  
11 pressure?

12 A. Yes.

13 Q. How many times did he tell you to do it?

14 A. Same thing. More than once. I'm not sure. I  
15 don't have definitive answers for you. I can't  
16 tell you he told me this many times. It was  
17 standard practice when I was working there, and it  
18 didn't matter who told me. It never really  
19 changed, and that was basically it.

20 Q. You mentioned Gerry.

21 A. Yes.

22 Q. What is Gerry's last name?

23 A. Priamo.

24 Q. Okay. And how many times did Mr. Priamo tell  
25 you to lower the back pressure?

1 A. I don't know. More than once.

2 Q. More than once?

3 A. Yes.

4 Q. But beyond that, you can't tell us how many  
5 times?

6 A. No.

7 Q. And did Mr. Priamo ever tell you not to lower  
8 the back pressure?

9 A. There was times they tried it, yes.

10 Q. All right. And did Mr. Priamo ever lecture you  
11 on the fact that you were lowering the back  
12 pressure and he didn't want you to do that? Did he  
13 ever do that?

14 A. No.

15 Q. That never happened?

16 A. No.

17 Q. All right. Let's talk just a little bit about  
18 when you worked on the night shift, because you're  
19 suggesting on the night shift that the back  
20 pressure would be lowered and that it had something  
21 to do with these 303 inspections, correct?

22 A. Yes.

23 Q. All right. Now, when you have a lower back  
24 pressure, does that make the process of sealing  
25 these different openings -- and I can't even

1 identify what all of them are, but does it make  
2 that processes easier?

3 A. It makes it doable, yes.

4 Q. It makes it easier, doesn't it?

5 A. Yes.

6 Q. It's a lot easier to do the sealing if the back  
7 pressure is lower.

8 A. Yes.

9 Q. True?

10 A. Yes.

11 Q. Okay. And if the back pressure is higher, it  
12 makes that sealing job more difficult?

13 A. Yes.

14 Q. And I think you testified that in your opinion  
15 that if you have the back pressure too high, it  
16 makes it impossible?

17 A. Yes.

18 Q. Right?

19 A. Yes.

20 Q. Okay. So, something that would be accomplished  
21 for those on a shift, a nighttime shift, if they  
22 lower the back pressure, it makes their job easier.  
23 True?

24 A. True.

25 Q. Okay. And if your job is made easier, it gives

1       you more time to do things other than your job.

2       True?

3       A.   No.   I was always doing my job.

4       Q.   Well, you're there, right?

5       A.   Yeah.

6       Q.   But if it takes you less time to do the  
7       sealing, it gives you more time to do things like  
8       play cards, doesn't it?

9       A.   True.

10               MR. PERSONIUS:   I have no further  
11       questions, Judge.

12               THE COURT:   Okay.   Just -- you mentioned  
13       Tony Brossack as one of the individuals that told  
14       you to lower the back pressure.

15               THE WITNESS:   Yes.

16               THE COURT:   All right.   Can you see the  
17       board up there, the second photograph?   Is that  
18       Tony Brossack, the gentleman you were talking  
19       about?

20               THE WITNESS:   If it is, he's gained a lot  
21       of weight since I've seen him.   It's hard to see  
22       from here, but --

23               THE COURT:   You think so?

24               THE WITNESS:   Can I go over and look?

25               THE COURT:   Sure.

1 THE WITNESS: Yes.

2 THE COURT: That's the same gentleman?

3 THE WITNESS: Yes.

4 THE COURT: Okay. Thank you.

5 Any redirect?

6 MR. PIAGGIONE: Very briefly, your Honor.

7 THE COURT: Okay.

8 REDIRECT EXAMINATION BY MR. PIAGGIONE:

9 Q. I just want to clarify that on cross the  
10 question was, so you lowered the back pressure on  
11 your own. Were you doing that because you were  
12 doing it without any orders or directions from  
13 anyone else to do it?

14 A. No.

15 Q. You were doing it because you were told to do  
16 it, is that correct?

17 A. Yes.

18 Q. Okay. And you didn't get any additional pay  
19 for lowering the back pressure?

20 A. No.

21 Q. Okay. And would you say that raising and  
22 lowering the back pressure, when you were there,  
23 was common knowledge on the battery?

24 A. Yes.

25 MR. PERSONIUS: Object, your Honor, to



1 common knowledge.

2 THE COURT: Well, it's been asked and  
3 answered. I'll let it stand.

4 MR. PIAGGIONE: Thank you, your Honor.

5 And the purpose of this, as your understanding,  
6 was so you could have less leaks --

7 MR. PERSONIUS: Your Honor, I object.  
8 It's leading, and I object to it.

9 THE COURT: It is leading. Sustained.

10 MR. PIAGGIONE: I'm going to -- no further  
11 questions then, your Honor.

12 THE COURT: Okay. Miss Grasso.

13 MS. GRASSO: Nothing further, your Honor.

14 THE COURT: Mr. Personius?

15 MR. PERSONIUS: Thank you, Judge. No.

16 THE COURT: Okay. You get your wish.  
17 That's it.

18 THE WITNESS: Thank you.

19 THE COURT: Thank you, Mr. Dolan.

20 Okay. How would you like to take a break,  
21 ladies and gentlemen, until 2 o'clock. Okay. Any  
22 objections? Okay. Thank you very much. Please  
23 keep your minds open. Don't discuss the case.  
24 Enjoy a beautiful day if you're going out there,  
25 and make sure you get back here at 2 o'clock.

1       Okay?   Thank you.

2               (Jury excused from the courtroom.)

3       THE COURT:   Is there anything additional?

4       MR. MANGO:   No, your Honor.

5       MR. PERSONIUS:   No, your Honor.

6       THE COURT:   Okay.   Thank you very much  
7       we'll see you at 2 o'clock.

8       MR. LINSIN:   Thank you, your Honor.

9               (Lunch recess was taken.)

10              (Jury not present in the courtroom.)

11       THE COURT:   Good afternoon.   Please have a  
12       seat.

13       MR. LINSIN:   Good afternoon, Judge.

14       THE COURT:   Okay.   We're back on in the  
15       case of U.S.A. versus Tonawanda Coke Corporation  
16       and Mark Kamholz, defendant.   I understand there  
17       are a couple of preliminary matters.

18       MR. MANGO:   Yes, your Honor.   There is one  
19       issue with Government Exhibit 33, which is already  
20       in evidence.   This is one of the certification  
21       forms.   If you want, we could try to bring it up on  
22       the screen.   This is to be signed by the plant  
23       manager.   The person whose signature is allegedly  
24       on this is going to testify now, Gerry Priamo.   And  
25       he's going to say that this document -- that he

1 didn't sign this document, and that he actually  
2 recognizes these initials, MK, as Mark Kamholz's.  
3 And I just want to make sure the Court knows that  
4 I'm going to be sensitive of the Court's ruling,  
5 because obviously we had a pretrial ruling about  
6 Defendant Kamholz's practice of forging  
7 individual's names. We're not going to go into the  
8 fact that this is a forgery, but I think the  
9 witness is going to say that's not my signature. I  
10 wanted to make sure the Court is aware of that so  
11 we don't have an issue when that comes out, and I  
12 don't get the look from your Honor.

13 THE COURT: What look are you talking  
14 about?

15 MR. MANGO: The look that I did something  
16 wrong.

17 THE COURT: All right. Well, I'll focus  
18 my attention on Mr. Piaggione. All right. But  
19 you're not -- the witness is not going to testify  
20 that he knows who signed that name.

21 MR. MANGO: Well, he does recognize the  
22 initials MK as Mark Kamholz's initials. So I think  
23 with that limited information, then we're going to  
24 move on.

25 THE COURT: Okay.

1 MR. PERSONIUS: Judge, I don't know what  
2 purpose do we serve by having the -- if we just  
3 don't get into it -- we don't accomplish anything  
4 by getting into it. And you run the risk of going  
5 contrary to your ruling. So why don't we leave it  
6 alone and not show the witness an exhibit and it  
7 becomes a non-issue in the case.

8 THE COURT: This is a certification  
9 document though.

10 MR. MANGO: Right.

11 MR. PERSONIUS: Right.

12 But you've already ruled that anything that  
13 gets close to a forgery is not going to come in  
14 under 404(b) and I don't see -- the document's in  
15 evidence, Judge, and I don't see what purpose we  
16 serve by having this witness say that's not my  
17 signature.

18 MR. MANGO: Your Honor, your ruling was  
19 with respect to the government's request to  
20 introduce a practice of Defendant Kamholz forging a  
21 signature. This one document, which is already in  
22 evidence, and the name Gerry Priamo has already  
23 come up as being the signatory of this document, I  
24 think it's relevant to briefly go into that, that  
25 he didn't sign this form, and he can recognize Mark

1 Kamholz's initials. We're not going to get into  
2 that there's a practice of a forgery. So we won't  
3 be going in contravention of the Court's ruling.

4 MR. LINSIN: Your Honor, I would just ask  
5 what conceivable relevance, even that limited  
6 testimony, would have to any issue that is  
7 legitimately an issue in this trial? I fail to see  
8 how that's relevant, except the obviously improper  
9 innuendo that Mark Kamholz somehow did something  
10 wrong.

11 THE COURT: Well, you know, my ruling I  
12 think with respect to 404(b) is clear, and that was  
13 category number 5. And the specific wording of  
14 that is Kamholz's practice of forging the plant  
15 superintendent's name on certain records submitted  
16 to EPA and NY -- New York State DEC --

17 MR. MANGO: Yes, DEC.

18 THE COURT: So, I think it falls within  
19 the four corners of that exclusion, Mr. Mango.  
20 Unless there's a proper purpose for it, other than  
21 admissibility under 404, I wouldn't allow it.

22 MR. MANGO: Well, your Honor, in the  
23 limited case then, I'd ask that at least the  
24 witness be able to say this is not my signature.  
25 There's two other documents that are in evidence

1       that bear his signature that are totally different  
2       than this. This is in evidence, and it relates  
3       directly to the Title V counts. We need to -- we  
4       need to have some examination of this because this  
5       witness is going to say I relied on Defendant  
6       Kamholz in signing this. So, it is relevant to  
7       knowledge of the Title V permit.

8               THE COURT: He's going to say he relied on  
9       Defendant Kamholz in terms of submitting the  
10      document? I mean, did he --

11             MR. MANGO: In signing the document, yes.

12             THE COURT: But -- but he -- what else is  
13      he going to say? He's not going to say he objected  
14      to it, right?

15             MR. MANGO: No. He's going to say he  
16      relied on Defendant Kamholz, and that he had a  
17      discussion with Defendant Kamholz about -- about  
18      these documents before he would sign them.

19             THE COURT: It seems to me that that  
20      interjects the issue that everybody was trying to  
21      keep out of here, or at least it runs the risk of  
22      confusing the issue. You have what you want with  
23      respect to the certification. That document was  
24      submitted, right, and that's what you wanted --

25             MR. MANGO: Right. But left undiscussed,

1       there is now an inference with the jury that  
2       this -- that this plant manager did it on his own  
3       and signed this document. He's going to say he has  
4       no idea what a Title V permit is.

5               THE COURT: I mean, how do you move that  
6       admission in light of my ruling previously that  
7       that smacks of 404(b)?

8               MR. MANGO: Well --

9               MR. PIAGGIONE: Can I be permitted to  
10      speak at all on this?

11              THE COURT: I hate to allow you to do  
12      that. Go ahead.

13              MR. PIAGGIONE: Your Honor --

14              THE COURT: I mean, are you finished, just  
15      so I know?

16              MR. MANGO: Your Honor, I don't think that  
17      it's -- going back to the 404(b), in your ruling,  
18      this is not a -- we're not showing a practice here.  
19      This is one isolated incident. But it -- it is so  
20      relevant to what everybody relied on Defendant  
21      Kamholz to do with respect to the Title V permit.  
22      And this very document which says I'm in compliance  
23      with the permit, the witness is going to say I  
24      didn't even know what the permit was. So --

25              THE COURT: Well, is that what he's going

1 to say?

2 MR. MANGO: Yeah.

3 THE COURT: I thought you said he relied  
4 on the permit submission.

5 MR. MANGO: No. He relied on Defendant  
6 Kamholz.

7 THE COURT: Saying what? That that was  
8 submitted?

9 MR. MANGO: Everything in here is okay.  
10 You can sign this. And I think that's very  
11 important testimony when we relate to the Title V  
12 charges or in Counts 1 through 15.

13 MR. LINSIN: And your Honor, that precise  
14 testimony can be elicited from this witness without  
15 any reference to the signature in this document.  
16 I've been listening closely to try and discern why  
17 it is that -- or how it is that this signature on  
18 this document relates to the point Mr. Mango is  
19 saying is the hook for relevance. And he can  
20 certainly elicit from Mr. Priamo did you rely on  
21 Mr. Kamholz in signing these certifications.

22 THE COURT: So there's no problem with the  
23 signing if he relied on Kamholz, right?

24 MR. LINSIN: Well, right. Right. And so  
25 getting into this detour about, well, is this your



1 signature on this document injects an unnecessary  
2 and sinister connotation.

3 THE COURT: There's reliance. There's no  
4 issue with respect to the reliance. There is a  
5 sinister aspect that can be raised in connection  
6 with this. I'm going to find that this falls  
7 within my ruling, that it really is or can be part  
8 of the practice of forging documents as you were  
9 arguing it. So I'm going to exclude it. I'll hear  
10 from Mr. Piaggione only so he doesn't --

11 MR. PIAGGIONE: Just one point, your  
12 Honor. Perhaps you don't recall, but defense  
13 counsel introduced two previous documents which  
14 they actually focused in on Mr. Priamo's name and  
15 certification drawing a distinction between him and  
16 Mr. Kamholz. I think that, in fairness to the  
17 individuals testifying, the inference is that he  
18 signed all these documents. At the very least he  
19 should be permitted to say, at least in this  
20 document, that he did not sign it. We don't have  
21 to get into who may have signed it, but he did not  
22 sign that particular document. I think that's --

23 THE COURT: But Mr. Mango wanted to go one  
24 step further and say, whose initials are they and  
25 do you recognize those.

1 MR. PIAGGIONE: I think we can withdraw  
2 that and --

3 MR. MANGO: Yes.

4 MR. PIAGGIONE: -- we would just ask for  
5 him to be able to say this is not his signature  
6 since the inference is already that he's been  
7 signing all these documents.

8 THE COURT: He relied on it. I don't know  
9 if that cures the problem.

10 MR. MANGO: Well, your Honor, the other  
11 thing I would note is, the two other certifications  
12 that bear Mr. Priamo's signature are totally --  
13 these are all in evidence -- are totally different  
14 than this document, which does not bear his  
15 signature.

16 And, again, this was a focus during, I believe,  
17 cross-examination of Mr. Carlacci, where this was  
18 focused in on. Okay, so who signed this. I  
19 remember they read the certification language. So  
20 this is Mr. Priamo who's certifying to this, right?

21 THE COURT: So he is going to be  
22 testifying about his reliance on information that  
23 went into those --

24 MR. MANGO: Yes, your Honor.

25 THE COURT: -- particular documents.

1 MR. MANGO: Yes, your Honor.

2 THE COURT: Why is the signature that much  
3 of an issue? I think it's too confusing. I think  
4 it can be potentially unfairly prejudicial. I  
5 think it flies in the face of the pretrial ruling  
6 of this case as it relates to 404(b). So I'm going  
7 to exclude it.

8 MR. MANGO: All right. I won't ask about  
9 the signature.

10 The other issue I wanted to bring up is the  
11 only witness we currently have here is Mr. Priamo.  
12 We were expecting to go a little longer. We may  
13 have a witness available this afternoon. We will  
14 have a witness available this afternoon. I just  
15 wanted to alert the Court of that issue at this  
16 point now in terms of scheduling.

17 MR. PIAGGIONE: The issue is actually it's  
18 a witness that we had identified only yesterday as  
19 appearing tomorrow. And it was only lately that  
20 we've been able to do that. The problem was the  
21 witness that we had as a -- someone who could  
22 testify, had -- his wife was ill in Pittsburgh and  
23 he had to leave last night. And I informed the  
24 counsel that we had a change, that Mr. Garing was  
25 not going to be available. But in fairness we did

1 not identify this other witness as being here  
2 today. And --

3 MR. LINSIN: Or tomorrow, your Honor.

4 MR. PIAGGIONE: I indicated earlier today.

5 MR. LINSIN: We were told -- we were given  
6 three new names today that weren't on our list for  
7 today or tomorrow. We have had to scurry to try  
8 and retrieve binders, but we did not even expect  
9 this witness for tomorrow, let alone for today.  
10 You know, if -- if -- depending on the length of  
11 Mr. Priamo's testimony, if Mr. -- is it Mr.  
12 Cratsley --

13 MR. PIAGGIONE: Yes.

14 MR. LINSIN: -- who they anticipate being  
15 here?

16 If the government wishes to proceed with his  
17 direct testimony, we would have no objection. But  
18 I have -- I do now have his witness binder. I  
19 don't believe my co-counsel has his, and I just  
20 don't know -- we may not be there in a time issue,  
21 but we would just ask for consideration.

22 THE COURT: Okay. I'll do that.

23 MR. PIAGGIONE: Thank you, your Honor.

24 THE COURT: And, you know, getting back to  
25 that other issue with respect to the initials,

1 doesn't that indicate on its face that he signed  
2 for?

3 MR. MANGO: Yes.

4 THE COURT: So, I mean, if you -- if you  
5 try to do it in a way that relates to an adverse  
6 inference from doing it that way, I think that's  
7 unfairly prejudicial. I'm going to let my ruling  
8 stand, and you'll be precluded from inquiring on  
9 that.

10 MR. MANGO: Yes, your Honor.

11 MS. GRASSO: Your Honor, we had one more  
12 issue, a 404(b) issue. Last week we had discussed  
13 our concerns about 404 evidence that wasn't  
14 notified by the government, and that came to our  
15 attention through their description in their  
16 witness list. And we've been notified that Sean  
17 Hoffman will be testifying probably tomorrow or  
18 this week and his description states he will  
19 testify about dirty coke pushes, which were not  
20 included in the government's notification.

21 I discussed that with Mr. Piaggione, and he  
22 said he would not be testifying to that, but the  
23 government would be moving to admit photographs  
24 depicting those dirty coke pushes.

25 We object to that, your Honor, as being

1       unfairly prejudicial and irrelevant to any of our  
2       issues in this trial and just basically a back-door  
3       way of getting 404(b) in through photographs, which  
4       we believe is not warranted.

5               THE COURT:   Who is the witness?   Daniel --

6               MS. GRASSO:   Sean Hoffman.

7               THE COURT:   Sean Hoffman, okay.

8               All right.   What's your position,  
9       Mr. Piaggione?

10              MR. PIAGGIONE:   Yes, your Honor.   We are  
11       not introducing any evidence about 303 -- excuse  
12       me -- dirty pushing.   That was decided earlier when  
13       you indicated your 404(b) decision.   We -- we  
14       simply left it out after that.   That was left over  
15       from that particular -- it's remnants of a previous  
16       description.   The purpose of the photographs -- and  
17       I indicated to Ms. Grasso -- we're not going to ask  
18       him what's depicted in there beyond the fact that  
19       that's a depiction of the plant.   And the reason  
20       why is because they're bringing out the fact that  
21       there is policy by the -- the company to prohibit  
22       photographs from being taken by employees.   And  
23       this goes against this concept of open and obvious  
24       type of conduct by the defendants.   And he would  
25       say that he wanted to show his children where he

1 works so he took some photographs, but they are  
2 photographs from his vehicle. It's obviously taken  
3 from his vehicle. It's simply that that's how he  
4 could show his kids where it was. And it goes to  
5 the policy -- contradicts the policy of open and  
6 obvious.

7 We're not going to ask him to comment what he's  
8 observing or anything along those lines. If  
9 defense is willing to allow us to bring out that  
10 that is the policy, I can do it with photographs,  
11 if that's an issue.

12 THE COURT: All right.

13 MS. GRASSO: Your Honor, it's -- first of  
14 all, we're surmising the photographs we're talking  
15 about because they weren't identified. We are  
16 surmising they're some of this group in  
17 Government's Exhibit 81. It's unclear when they  
18 were taken. It's unclear how there were relevant,  
19 and we're happy to show them to you to show you how  
20 they're going to be depicting the plant, which has  
21 nothing to do with any of the issues of the case.

22 THE COURT: Let's talk about relevancy  
23 first. What conceivably is the relevance other  
24 than it might contradict the policy against taking  
25 photographs? Where does that fall into place?

1 MR. PIAGGIONE: It goes against the  
2 defense. They're claiming all these violations  
3 were open and obvious when employees can't even  
4 bring in a camera to take a picture of where they  
5 work.

6 MS. GRASSO: Your Honor, having worked at  
7 many manufacturing plants, no cameras are across  
8 the board a standard policy. And the government is  
9 trying to imply that that is some how sinister here  
10 by introducing these photographs, which are clearly  
11 prejudicial.

12 THE COURT: Okay. I haven't seen the  
13 photographs.

14 MS. GRASSO: May I --

15 THE COURT: I have a problem with  
16 relevancy. And I don't think that that is, as I  
17 view it, relevant to the argument with respect to  
18 what was open and notorious.

19 So at least my preliminary ruling is -- and  
20 I'll take those, I'll take a look at them, unless  
21 you object. I'm going to preclude those photos.

22 MR. PIAGGIONE: It's not the photos I'm --  
23 it's fine, your Honor. I won't bring the photos  
24 in, if that's the issue.

25 But the fact that -- he could testify about the



1 fact that there's a no camera policy. If defense  
2 wants to bring it out on cross, that other  
3 manufacturers prohibit it, that's fine. But he  
4 should be at least allowed to testify to that  
5 effect.

6 MS. GRASSO: I think an employee taking  
7 photographs has absolutely no relevance to any of  
8 our issues in question here. Any disclosures  
9 relevant to DEC has nothing do with the employees  
10 taking photographs for their family.

11 THE COURT: I mean, there's no notice  
12 whatsoever in your summary description of what  
13 Hoffman was going to testify to. I'll reconsider  
14 it on relevance, if you have a better argument.  
15 He's -- you're not calling him until tomorrow?

16 MR. PIAGGIONE: Yes.

17 THE COURT: I'll take a look at it again.  
18 But preliminarily, I find that it doesn't comport  
19 with the summary. And, secondly, I don't find it  
20 relevant to the issue of open and notorious at this  
21 point. I won't allow the questioning or the  
22 photos. I want to see the photos just so I have a  
23 perspective on it.

24 MS. GRASSO: And, your Honor, we're  
25 guessing that these are the relevant photos.

1           THE COURT:   You mean the irrelevant  
2   photos?

3           MS. GRASSO:   The irrelevant photos.  
4   You'll see the ones with the black smoke.

5           THE COURT:   Okay.   I'll look at these  
6   after we get through this afternoon, and I'll  
7   revisit it tomorrow, if necessary.   But, right now  
8   my ruling -- the ruling stands, unless I'm  
9   otherwise persuaded.

10          MR. PIAGGIONE:   Okay.

11          THE COURT:   Anything else?

12          MR. MANGO:   Your Honor, we do have a court  
13   stipulation to start with, and we can proceed right  
14   to the witness.

15          THE COURT:   Okay.   Thank you.   Chris, if  
16   you would please.

17          (Jury seated.)

18          THE COURT:   Good afternoon.

19          THE JURY:   Good afternoon.

20          THE COURT:   Please have a seat.   Okay.  
21   Sorry for the slight delay.   We actually had to  
22   work out some matters.   I think we're there.   But  
23   we're ready to start in any event.   And we are  
24   resumed in the case of United States versus  
25   Tonawanda Coke Corporation and Defendant Mark

1 Kamholz.

2 The attorneys and parties are back, present.  
3 The jury is here. Roll call waived. We are in the  
4 government's case and they have -- the government  
5 has the burden of proof beyond a reasonable doubt.  
6 The government, I believe, chooses to open with a  
7 stipulation.

8 Is that right, Mr. Mango?

9 MR. MANGO: That's correct, your Honor.  
10 May I proceed?

11 THE COURT: Yes.

12 MR. MANGO: Thank you. Your Honor, I'm  
13 reading from what's been marked Court Exhibit  
14 Number 4.

15 Stipulation: The United States of America, by  
16 and through its attorney, William J. Hochul, Jr.,  
17 United States Attorney for the Western District of  
18 New York, and Ignacia S. Moreno, Assistant United  
19 States -- I'm sorry, Assistant Attorney General for  
20 the United States Department of Justice,  
21 Environment and Natural Resources Division, and the  
22 undersigned Assistant United States Attorney and  
23 Senior Trial Attorney, and the undersigned counsel  
24 for Defendants Tonawanda Coke Corporation and Mark  
25 L. Kamholz, do hereby stipulate and agree to the

1 following fact:

2 The cost to install baffles in the two quench  
3 towers at the Tonawanda Coke Corporation in 2009  
4 and 2010 was \$125,000.

5 And that's dated today, and it's signed by  
6 myself, Mr. Piaggione, Mr. Linsin, Ms. Grasso,  
7 Mr. Personius, and the defendant, Mr. Kamholz.

8 Thank you, your Honor.

9 THE COURT: Okay. And, ladies and  
10 gentlemen, that information is yours to consider as  
11 competent evidence, should you choose to do that in  
12 arriving at your unanimous verdict in this case.

13 Okay. What's next, Mr. Mango?

14 MR. MANGO: Ready to proceed, your Honor.  
15 The government would call Gerald Priamo.

16 THE COURT: Okay. If you'd approach the  
17 witness stand, I'll tell you when to stop. And  
18 just keep on coming. Stop right about there. Turn  
19 around and face the jury, please, and we'll have  
20 the oath administered to you.

21 G E R A L D A N T H O N Y P R I A M O, having  
22 been duly sworn as a witness, testified as follows:

23 THE COURT: Okay. Good afternoon.

24 THE WITNESS: Good afternoon, your Honor.

25 THE COURT: Be careful. Get comfortable.

1 THE WITNESS: Is this water safe to drink?

2 THE COURT: Yeah, but you better get a  
3 clean cup. And if it helps anything, Mr. Priamo, I  
4 can assure you I witnessed the filling of those  
5 containers this morning. All right. So, the water  
6 is fresh as well.

7 Okay. A few preliminary instructions, and that  
8 is that we want you to talk at the microphone. The  
9 microphone is friendly. You have to speak in a  
10 conversational tone. And if you would direct your  
11 attention to the jury, that would be helpful.  
12 You're here to testify for their benefit.

13 Try to be as concise with your answers as you  
14 can. If you don't understand a question, just  
15 challenge the attorney or me on it to say, look, I  
16 don't understand it, ask it again, or ask another  
17 question. And then if you can answer the question  
18 yes or no, once you understand it, please try to do  
19 that. Don't volunteer information, if you can help  
20 it. That's what really complicates matters.

21 And, finally, if there's an objection, give me  
22 time to rule on the objection before you answer.  
23 Then I will give you instructions on whether to  
24 answer the question, whether to wait, or whether to  
25 follow another path.

1 Do you understand?

2 THE WITNESS: Yes, your Honor.

3 THE COURT: Okay. I think you're going to  
4 carry okay. State your full name and spell your  
5 last name.

6 THE WITNESS: Full name is Gerald Anthony  
7 Priamo, P-R-I-A-M-O.

8 THE COURT: That's the way it should be  
9 done.

10 Mr. Mango, that's your witness.

11 MR. MANGO: Thank you, your Honor.

12 DIRECT EXAMINATION BY MR. MANGO:

13 Q. Good afternoon, Mr. Priamo. How are you?

14 A. Good afternoon, Mr. Mango.

15 Q. Are you currently employed, Mr. Priamo?

16 A. No, I'm not.

17 Q. And what -- if you can tell the jury, what was  
18 your most recent employment?

19 A. Tonawanda Coke.

20 Q. How long were you employed at the Tonawanda  
21 Coke Corporation?

22 A. Thirty-two years.

23 Q. And if you could tell the jury, what your last  
24 position was at the Tonawanda Coke Corporation?

25 A. Battery supervisor.

1 Q. And how long were you in that position?

2 A. Well, I started as an hourly employee back in  
3 1978 at Tonawanda Coke. After about three years, I  
4 became a general foreman. After about three years  
5 after that I became battery supervisor. In  
6 September of 2005 I became plant superintendent  
7 until December of 2006. 2006, until sometime in  
8 October of 2007, I was assigned to Vanocur. And  
9 after that period of time, I went back and I was  
10 back as battery supervisor.

11 Q. Okay. So you went through a number of  
12 different positions as battery supervisor. Can you  
13 tell the jury what your job duties were?

14 A. My job duties were to instruct the general  
15 foremans [sic] on their job duties. And usually I  
16 would work with the heating department.

17 THE COURT: Let me just ask a question.  
18 You mentioned Vanocur. That's another company,  
19 isn't it?

20 THE WITNESS: Yes, it is.

21 THE COURT: Okay. And you said you were  
22 assigned there?

23 THE WITNESS: Yes, I was.

24 THE COURT: Okay.

25 BY MR. MANGO:

1 Q. Is the ownership of Vanocur the same as with  
2 Tonawanda Coke Corporation?

3 A. As far as I know.

4 Q. Okay. And have you been -- in your duties at  
5 Tonawanda Coke Corporation, have you been  
6 dispatched anywhere or traveled at all?

7 A. Yes. Starting in roughly 2000, the year 2000,  
8 I was -- I went to Indianapolis Coke to do oven  
9 repairs. 2002 I went back there. 2002 I went to  
10 Erie. 2003 I spent the fall in Erie. 2000 --  
11 September of 2004 I was plant superintendent of  
12 Erie Coke until 2000 -- until February -- I'm  
13 sorry. It was February of 2004 to February of 2005  
14 I was plant superintendent of Erie Coke.

15 Q. Okay. Have you -- for the Tonawanda Coke  
16 Corporation, have you ever done any travel abroad?

17 A. Yes. I was in the Netherlands from June, July,  
18 of 2008. I was in South Africa in November and  
19 December of 2006. I was in Hamilton, Ontario in  
20 August and part of September of 2008.

21 Q. Okay.

22 A. And I've also been at different coke plants. I  
23 was A.K. Steel in Middletown, Ohio four times. And  
24 I was at Sloss. That's located in Birmingham,  
25 Alabama. I was there four times.



1 Q. Okay. Let's go to Erie Coke Corporation. Do  
2 you know who owns that?

3 A. Don Crane.

4 Q. Is he the same person who owns the Tonawanda  
5 Coke Corporation?

6 A. That's correct.

7 Q. And this company, Vanocur, what is made at  
8 Vanocur?

9 A. It's a new procedure where they make modules to  
10 install in the coke ovens to take the place of a  
11 silica brick. It lasts a lot longer. It's more  
12 durable.

13 THE COURT: Mr. Priamo, you don't have to  
14 lean into the microphone. That will distort it.  
15 Just sort of stay straight and talk at it, please.

16 BY MR. MANGO:

17 Q. And, Mr. Priamo, your travels abroad, just  
18 describe in general detail what you were dispatched  
19 to do abroad.

20 A. Supervise.

21 Q. What you were supervising?

22 A. The installation of modules.

23 Q. All right. And these are the ones that are  
24 made at Vanocur?

25 A. That's correct.

1 Q. But for a time period you were plant  
2 superintendent at the Erie Coke Corporation?

3 A. That is correct.

4 Q. Now, in any of these positions you've held in  
5 the 32 years you were employed, did you ever  
6 receive any type of environmental training by the  
7 Tonawanda Coke Corporation?

8 A. No, sir.

9 Q. Did you happen to work at the site, the  
10 Tonawanda Coke Corporation site, prior to 1978  
11 before the Tonawanda Coke Corporation took  
12 ownership?

13 A. Yes. I worked for Allied Chemical, which is  
14 the same place, for three years.

15 Q. And do you know a person by the name of Mark  
16 Kamholz?

17 A. Yes, I do.

18 Q. And how do you know him?

19 A. He's standing right over there.

20 MR. MANGO: Your Honor, may the record  
21 reflect the Defendant Kamholz stood up and the  
22 witness indicated in that direction so --

23 THE COURT: He identified him is what  
24 you're trying to get to?

25 MR. MANGO: Yes, your Honor.

1 THE COURT: The record will so reflect.

2 BY MR. MANGO:

3 Q. What position did Defendant Kamholz hold at  
4 Tonawanda Coke corporation?

5 A. Environmental manager.

6 Q. During your time at the Erie Coke Corporation,  
7 did he hold any positions at the Erie Coke  
8 Corporation?

9 A. Environmental manager.

10 Q. He was environmental manager there as well?

11 A. That's correct.

12 Q. Do you know if Defendant Kamholz worked at the  
13 Tonawanda Coke site before Tonawanda Coke actually  
14 purchased the property?

15 A. Yes. He also worked at Allied Chemical.

16 Q. Okay. So you've mentioned now that you worked  
17 on the battery for a time -- time being. Quite a  
18 long period of time, is that right?

19 A. That's correct.

20 Q. Are you familiar with the terms "low  
21 production," "high production" -- "low production,"  
22 "medium production" and "high production"?

23 A. Yes, I am.

24 Q. All right. If you could tell the jury what do  
25 those terms relate to.

1 A. The amount of ovens that are scheduled to be  
2 pushed every day.

3 Q. And do you have an estimate based on your  
4 experience and your work at the Tonawanda Coke  
5 Corporation what --

6 A. Low production would generally be from 24 to 33  
7 ovens a day. Starting at 34 to roughly 42 would  
8 be -- or 41 would be medium production. And from  
9 42 on would be high production.

10 Q. Okay. Are there any records maintained by  
11 battery personnel in the ordinary course of  
12 business that would relate to the number of ovens  
13 pushed in a day?

14 A. Yes. A sheet that the general foreman fills  
15 out with the oven number and the scheduled -- what  
16 time the oven is supposed to be pushed. And it's  
17 turned over to the pusher operator who fills in  
18 what time it's actually pushed, charged, and the  
19 amps that pushes the oven out.

20 Q. All right. I'd like to show you, Mr. Priamo,  
21 for identification purposes on your screen,  
22 Government Exhibit 132 for identification purposes.

23 MR. MANGO: And absent an objection, your  
24 Honor, I would move this into evidence.

25 THE WITNESS: The --

1 MR. MANGO: Just wait one second,  
2 Mr. Priamo.

3 MR. LINSIN: No objection, your Honor.

4 MR. PERSONIUS: No objection, Judge.

5 THE COURT: Okay. 132, no objection.  
6 Received. May be published, if you choose.

7 MR. MANGO: Yes, your Honor. I would ask  
8 that it be published.

9 (Government's Exhibit 132 was received  
10 into evidence.)

11 BY MR. MANGO:

12 Q. All right. Mr. Priamo, can you tell the jury  
13 now what we're all looking at on our screen?

14 A. There is 29 ovens scheduled to be pushed.

15 Q. Okay. So this is called what? What is this  
16 document?

17 A. This is a pushing report that's filled out.

18 Q. That document you were just referring to?

19 A. Right.

20 Q. All right. And what date is this pushing  
21 report for?

22 A. It's Friday, 4/17/09.

23 Q. Okay. And you said this would -- this would  
24 constitute 29 ovens being pushed?

25 A. That's correct.

1 Q. All right. Now, there is a -- a couple columns  
2 I want to just go through so we can understand what  
3 this form -- there is an oven number.

4 How are the ovens numbered at the Tonawanda  
5 Coke Corporation?

6 A. They are marked from 61 to 126 minus zero.

7 Q. Okay. So 61 -- let's say we got to 68, 69 --

8 A. Seventy-one.

9 Q. There would be no 70?

10 A. Right.

11 Q. It would go to 71, and then up, okay.

12 So then there's a column which says time  
13 scheduled. What would that indicate?

14 A. That would be the time the oven is scheduled to  
15 be pushed.

16 Q. Okay. And then a time, I believe, last  
17 charged.

18 A. That would be the time the oven was charged  
19 previously.

20 Q. Okay. Who fills out at least the oven number  
21 and the time scheduled?

22 A. That would be the general foreman.

23 Q. Okay. And then these other columns -- maybe we  
24 can focus on this section here.

25 Okay. Then there is a time pushed column, a

1 coking time, a brake amps, time leveled, kind of  
2 coal, kind of coke, is that correct?

3 A. That's correct.

4 Q. Okay. So the time pushed would relate to --  
5 what does that mean?

6 A. The oven was scheduled at 12:00 o'clock. It  
7 pushed out at, looks like, 12:10.

8 Q. 12:10, all right. And the coking time there,  
9 is that --

10 A. That's the actual coking time that it is baked  
11 before it's pushed would be 49.45 hours that it was  
12 in the oven before it was pushed out.

13 Q. Okay. And brake amps. Why don't you tell the  
14 jury what brake amps means.

15 A. That's the amount of amperage or amps that it  
16 takes to have the ram push the coke through the  
17 oven.

18 Q. Okay. And what would time leveled mean?

19 A. That would be the time that the coal is all  
20 dumped into the -- to the oven and leveled.

21 Q. All right. And then the kind of coal and the  
22 kind of coke, you see down in this part here, FDY?

23 A. That would be foundry coke.

24 Q. All right. So this -- if we could just zoom  
25 back out, please.

1           This, you mentioned, was 29 ovens. Would you  
2           consider this low, medium, or high?

3           A. That's low production.

4           MR. MANGO: Your Honor, I'd ask to show  
5           the witness for identification purposes Government  
6           Exhibit 133, and absent an objection, move this  
7           into evidence.

8           MR. LINSIN: No objection, your Honor.

9           MR. PERSONIUS: No objection, Judge.

10          THE COURT: Okay. 133 received, no  
11          objection. You may publish.

12          MR. MANGO: Thank you, your Honor. I  
13          would ask that it be published.

14          (Government's Exhibit 133 was received  
15          into evidence.)

16          BY MR. MANGO:

17          Q. Mr. Priamo, what are we looking at on our  
18          screen now? Do you see this?

19          A. Yes. We're looking at the same report.

20          Q. The pushing report?

21          A. Pushing report.

22          Q. Is it for a different day?

23          A. It's for 11/30/08.

24          Q. Okay. Now, there's the one column that is  
25          not -- there is a column that's not filled in here,



1 coking time.

2 A. Yeah, I see that.

3 Q. Okay. Were there some instances that the  
4 coking time was not included?

5 A. Actually, the general foreman is -- besides  
6 filling out the oven number and the time that it's  
7 supposed to be pushed, he's also supposed to be  
8 filling in the coking time.

9 Q. Okay. So looking at this document, we don't  
10 know how long this coke had been sitting in the  
11 oven, do we?

12 A. No, we don't.

13 Q. Okay. Now, how many ovens indicate were pushed  
14 on this day?

15 A. Thirty-six.

16 Q. All right. Would you consider this low,  
17 medium, or high production?

18 A. Medium.

19 Q. All right. Let's look at one more pushing  
20 report. I'd like to -- well, I shouldn't have said  
21 that, if it's not evidence.

22 Let's look at Government Exhibit 134 for  
23 identification purposes. And absent an objection,  
24 move that into evidence.

25 MR. LINSIN: No objection, Judge.

1 MR. PERSONIUS: No objection, your Honor.

2 THE COURT: Okay. 134 received, no  
3 objection. You may publish.

4 MR. MANGO: I would ask that it be so,  
5 thank you, your Honor.

6 (Government's Exhibit 134 was received  
7 into evidence.)

8 BY MR. MANGO:

9 Q. Mr. Priamo, we're looking at another pushing  
10 report, is that right?

11 A. That's correct.

12 Q. What date is this pushing report for?

13 A. 5/12/07.

14 Q. All right. And how many ovens indicate were  
15 pushed on 5/12/07?

16 A. Fifty-two.

17 Q. All right. Would you consider that low,  
18 medium, or high production?

19 A. That's high.

20 Q. Now, in terms of the kind of coke we see here,  
21 there's two things listed. What do you see?

22 A. I see indy and foundry.

23 Q. What's indy coke?

24 A. Indy coke is furnace coke.

25 Q. All right. Thank you. We can take that down.

1           Mr. Priamo, you mentioned that you were plant  
2 manager for a period of time?

3           A. That's correct.

4           Q. Again, what was the period of time that you  
5 were plant manager?

6           A. September '05 to September of '06 -- or  
7 December of '06.

8           Q. What were your job duties, if you can tell the  
9 jury, as plant manager?

10          A. Basically to make sure the plant was running  
11 smoothly. I'd have discussions with the different  
12 department heads on how the departments were  
13 running.

14          Q. What are the different department heads there?

15          A. We have the coal handling department. We have  
16 a battery department. We have the boiler house  
17 department. We have the maintenance department,  
18 by-product department, electrical department, and  
19 you have the railroad or yard department.

20          Q. Okay. And they all have different supervisors  
21 in charge of those departments?

22          A. That's correct.

23          Q. And you would work with all those supervisors?

24          A. Yes, I would.

25          Q. As part of your job duties as plant manager,

1       were you ever asked to sign any documents by  
2       Defendant Kamholz?

3       A.   Yes, I was.

4       Q.   What documents were you asked to sign?

5       A.   I really don't know.  They were just documents  
6       given to me.

7       Q.   Okay.  What is -- what was inside of these  
8       documents?

9       A.   Numbers.

10      Q.   Did you ever ask Defendant Kamholz any  
11      questions regarding these documents?

12      A.   Yes, I did.  I asked Mark, first of all, if  
13      this was legal.  He said, "Yes, it is, it's legal."  
14      And I said, "I don't understand what all these  
15      numbers are."  He said, "You don't have to worry  
16      about that."  He said, "Because you are the plant  
17      superintendent, it's your job to sign this form."  
18      And I told him a couple times I was not comfortable  
19      doing it, but I did it.

20      Q.   I'd like to show you one document that's  
21      already in evidence, Government Exhibit 31, please.  
22      If we could pull that up?

23           And do you see that document on your screen?

24      A.   Yes, I do.

25      Q.   Okay.  It's titled "Certification of Truth

1 Accuracy and Completeness."

2 Do you see that?

3 A. Yes, I do.

4 Q. It has reporting type, annual, and reporting  
5 period of January 1st, '05 to December 31st, '05,  
6 right?

7 A. Right.

8 Q. Were you plant manager during a period in that  
9 time period?

10 A. No, I was -- yes.

11 Q. You were. You were plant manager at some  
12 point --

13 A. Some point, yes.

14 Q. Okay. Looking at the face of this, do you know  
15 what this document is?

16 A. I do not have a clue.

17 Q. All right. If we could go to the next page of  
18 this document, document page 2, do you recognize  
19 this?

20 A. Yes, I do.

21 Q. What do you recognize this as?

22 A. I just -- when I was told to sign it, I would  
23 just look briefly through it, but I don't really  
24 know anything that's on there.

25 Q. Okay. Do you know, for example, condition

1       number, what condition number that relates to right  
2       there?

3       A.   No, I don't.

4       Q.   How about application requirement?  Do you know  
5       what that means?

6       A.   No, I don't.

7       Q.   Whether a deviation or not a deviation.  Do you  
8       know what that means?

9       A.   No, I don't.

10      Q.   Ever heard of a Title V permit?

11      A.   No, I haven't.

12      Q.   Did you ever review a Title V permit for the  
13      Tonawanda Coke Corporation?

14      A.   No, I never did.

15      Q.   Did Defendant Kamholz ever offer to show you a  
16      Title V permit?

17      A.   No, he didn't.

18      Q.   Let's just -- if we can go through all of the  
19      pages of this document, if you just want to look on  
20      your screen briefly.

21           Do you have any personal knowledge -- if we  
22      could go back to the first page, please?

23           Do you have any personal knowledge of the  
24      contents or the items contained in this document?

25      A.   No, I don't.

1 Q. Did you rely on anyone in executing this  
2 document?

3 A. I relied on Mark Kamholz.

4 Q. Why did you rely on Mark Kamholz?

5 A. As being the environmental manager, he would --  
6 he would know that it's up to code.

7 Q. I'd like to show you Government Exhibit 33.  
8 Now up at the top this says annual reporting period  
9 1/1/06 to 12/31/06.

10 Were you plant manager at some point during  
11 that time period?

12 A. Yes, I was.

13 Q. All right. And if we could scroll through  
14 these pages, please?

15 All right. Do you have any personal knowledge  
16 of the contents of Government Exhibit 33?

17 A. No, I don't.

18 Q. Again, did you rely on Defendant Kamholz in  
19 executing this?

20 A. Yes, I did.

21 MR. MANGO: Your Honor --

22 THE COURT: Let's take a break.

23 MR. MANGO: Yeah.

24 THE COURT: All right. Ladies and  
25 gentlemen, we're going to have you step out for

1 just five minutes.

2 (Jury excused from the courtroom.)

3 THE COURT: Okay. Mr. Priamo, I'm going  
4 to have you step down. If you'd step out into the  
5 corridor, we'll come back out for you.

6 MR. MANGO: Just wait outside those doors.

7 (Witness left the courtroom.)

8 THE COURT: Okay. You have a matter you  
9 want to discuss?

10 MR. MANGO: Yes, your Honor. I think in  
11 light of now the documents that are being on the  
12 screen, and -- I think it would be unfortunate if  
13 the record has to reflect that this witness  
14 executed this document, which he did not.

15 THE COURT: But you asked him that  
16 question, right?

17 MR. MANGO: Yes.

18 THE COURT: You said did you rely on --

19 MR. MANGO: I'm aware of that, your Honor.  
20 There's really no other question I could ask. I  
21 seem to be at a loss to be able to -- I was trying  
22 to come up -- I had a whole different line of  
23 questioning laid out. And I did change in terms of  
24 asking him -- I was just going to simply ask is  
25 this your signature at the bottom on the first one.



1 He was going to say yes. Is this your signature --  
2 when we got to this one, is this your signature;  
3 no, it's not. And then just move on. So instead I  
4 then asked were you plant manager during this  
5 reporting period.

6 THE COURT: Okay.

7 MR. MANGO: And I tried, your Honor. I  
8 just think it's unfortunate to really box him in  
9 and have this in front of the jury. If there was a  
10 way we could just simply address this --

11 THE COURT: All right. Well --

12 MR. MANGO: -- I think it would be  
13 appropriate.

14 THE COURT: Were you going to ask him if  
15 Mr. Kamholz was authorized to sign his name?

16 MR. MANGO: I was not going to ask him  
17 that question. I can, if you would like me to.  
18 But I'm going to guess from having spent a little  
19 bit of time with Mr. Priamo in the past three  
20 years, he's going to say no.

21 THE COURT: So then we have a problem.

22 MR. MANGO: Yes. But I could ask that  
23 question and report, if you want me to go ask that  
24 simple question.

25 THE COURT: Because if he -- if

1 Mr. Kamholz was authorized to sign his name, that's  
2 a different matter, I think --

3 MR. MANGO: Yes.

4 THE COURT: -- in terms of my ruling,  
5 because then you don't have a forgery, which is an  
6 unauthorized signature and it might not fall within  
7 the ruling.

8 MR. MANGO: Right.

9 THE COURT: But your view is that he's  
10 going to in all likelihood say that he did not  
11 authorize Mr. Kamholz to sign his name.

12 MR. MANGO: That would be my -- my --

13 THE COURT: Educated --

14 MR. MANGO: -- off-the-cuff educated guess  
15 from my knowledge, but I could go ask him. But --

16 THE COURT: Okay. So, what do we have  
17 now? I mean, you got into the signature on this  
18 particular document in I think that one question  
19 where at least his answer indicated that that was  
20 something that he signed. I don't know exactly how  
21 you termed it. I'm losing my voice, I think. But  
22 you -- so what do you want to do?

23 MR. MANGO: Your Honor, the government  
24 would ask for permission to, in this limited  
25 circumstance, craft one question for this one

1 document to ask him is this your signature at the  
2 bottom and let it be. And there's one more -- one  
3 more of these certificates that he did sign. And  
4 then move on to the next one. I think the point is  
5 made. I don't -- I think that's the simplest and  
6 most fair way for -- for the testimony to come out.  
7 But I'm willing to -- to defer to the Court if  
8 there's an alternative here without binding him.

9 THE COURT: Well, you don't address the  
10 MK.

11 MR. MANGO: I will not address --

12 THE COURT: And that's -- it's right there  
13 next to the signature, so somewhat problematic from  
14 that standpoint, right?

15 MR. MANGO: I could address the MK, if you  
16 would like.

17 THE COURT: Well, it's not what I like.  
18 I'm just discussing this with you.

19 MR. MANGO: Okay.

20 THE COURT: Mr. Personius?

21 MR. PERSONIUS: There was no need to get  
22 into this document in the fashion Mr. Mango did.  
23 He's got two other examples he can use that Mr.  
24 Priamo signed, so I'm not even sure why we're going  
25 down the road we are going down.

1           In terms of the -- it seems to me the simple  
2           answer at this point is -- I don't know if it's  
3           just the last question and answer that gets  
4           stricken, but just strike from the record the  
5           questions that get us into this problem. That's  
6           the equitable way to handle it based on your  
7           ruling, Judge.

8           MR. LINSIN: And, your Honor, if I may add  
9           quickly, I was very surprised to see this document  
10          called up and displayed in light of the Court's  
11          ruling minutes before this witness took the stand.  
12          I think to be -- the witness, as I had it, has  
13          testified that he had relied on Mr. Kamholz in  
14          executing this document. And my request -- my --  
15          what I believe would be an equitable way of  
16          resolving this, given the government's decision to  
17          call this document up after the Court's ruling, is  
18          just to move on. Move on to the next document.

19          The whole concern that we expressed in our  
20          discussion was some indication of impropriety in  
21          the way this document was signed, and now the  
22          government is claiming they're disadvantaged  
23          because they elected to put this up on the screen.  
24          And I think they backed into this, and they're now  
25          looking for relief.

1           THE COURT: What if we put Mr. Priamo on  
2     the stand out of the presence of the jury and asked  
3     him if he authorized the signature as far as  
4     Mr. Kamholz is concerned. If he says no, then you  
5     can't go through it at all because it falls within  
6     my ruling with respect to 404. If he says, "Yes, I  
7     did", then I don't think there's any harm in asking  
8     that. So why don't we find out on the stand?

9           MR. MANGO: Your Honor, there's one more  
10    issue that's now readily apparent, which I should  
11    have raised earlier in my argument. Mr. Priamo  
12    said very clearly I was plant manager from  
13    September of '05 to December of '06. This document  
14    is signed January 9th of '07. He was not plant  
15    manager. So there's another argument to be made as  
16    to why this is relevant and not totally unfairly  
17    prejudicial and outweighed because he wasn't plant  
18    manager. So someone else put his name down.

19           And, you know, I could just do this on a very  
20    limited basis and say the date the signature is  
21    there, January 9th of 2007, were you plant manager.  
22    I don't have to go into the signature. I could  
23    just ask that question.

24           MR. PERSONIUS: Judge, Mr. Mango and I had  
25    a discussion about this before you came out, and it

1 troubles me that I have to say this. But Mr. Mango  
2 brought up with me before you came out the issue  
3 he's now raising. To suggest that he didn't know  
4 about this before you came out to have this  
5 discussion, he knew about it, and we discussed it.

6 MR. MANGO: Your Honor, what I informed  
7 Mr. Personius was Mr. Priamo is going to say this  
8 is not his signature. He recognizes the initials.  
9 He's going to be able to say this is Mark Kamholz's  
10 initials. We have a problem because there was this  
11 Court ruling about forgery, so I want to raise this  
12 for the Court's attention. That's my recollection  
13 of the conversation.

14 But he wasn't plant manager. This is -- this  
15 is relevant to Defendant Kamholz's authority to  
16 control environmental issues at the plant.

17 THE COURT: Well, the record now reflects  
18 that he relied on Mr. Kamholz, right, for the  
19 information?

20 Secondly, his answer acknowledged that he was  
21 responsible for that document, meaning Mr. Priamo.

22 You start getting into whether that's his  
23 signature or not, whether there was authorization  
24 or not, and whether it's in 2007 or not, I think  
25 that's attenuated -- I think that's too extended.

1 I think that will unfairly confuse and unfairly  
2 prejudice, and I'm going to stay with the original  
3 ruling. Leave the document alone as it is. You  
4 asked the question, he answered it, and we move  
5 forward.

6 MR. MANGO: We'll move on your Honor.

7 THE COURT: Please, Cheryl. Thank you.

8 (Witness entered the courtroom.)

9 (Jury not present in the courtroom.)

10 THE COURT: Okay. Ask Mr. Priamo the  
11 question about whether he authorized the signing of  
12 that document.

13 MR. MANGO: Lauren, can we pull up  
14 Government Exhibit 33? Focus on this bottom half,  
15 please.

16 Mr. Priamo, do you see what's on your screen?

17 THE WITNESS: Yes, I do.

18 MR. MANGO: Did you authorize anybody to  
19 sign your name?

20 THE WITNESS: No, I didn't.

21 THE COURT: Okay. The ruling will stand.  
22 We'll bring the jury in, please.

23 Thank you, Mr. Priamo.

24 THE WITNESS: You're welcome, your Honor.

25 (Jury seated.)

1 THE COURT: Okay. We thought we'd  
2 introduce a little exercise into your routine  
3 today. Sorry for the delay. We had to work out a  
4 few things. Please have a seat. We are ready to  
5 go.

6 Back on the stand, ladies and gentlemen, is  
7 Gerald Priamo, and you're familiar with him from  
8 his earlier testimony. And he's going to continue  
9 with testimony, I think, on questioning by  
10 Mr. Mango.

11 Please.

12 MR. MANGO: Thank you, your Honor.

13 BY MR. MANGO:

14 Q. The government would like to pull up Government  
15 Exhibit 34 already in evidence.

16 All right. Mr. Priamo, do you see this  
17 document on your screen?

18 A. Yes, I do.

19 Q. Okay. And the report type at the top says  
20 semi-annual reporting period 1/13/06 to June 30th  
21 of '06. Do you see that?

22 A. Correct.

23 Q. Okay. Were you plant manager during that time  
24 period?

25 A. Yes, I was.



1 Q. All right. I'd like to, at this point, scroll  
2 through the document, have you look at the pages.

3 Okay. Do you know what this document is?

4 A. No, I don't.

5 Q. Do you know what its purpose is?

6 A. No, I don't.

7 Q. Do you know where it gets sent?

8 A. No, I don't.

9 Q. Did you have personal knowledge of any of the  
10 documents -- or any of the contents of this  
11 document at the time you signed it?

12 A. Could you repeat that, please?

13 Q. Did you have personal knowledge of any of the  
14 contents of this document --

15 A. No, I didn't.

16 Q. -- at the time you signed?

17 A. No.

18 Q. All right. Did you rely on anyone in executing  
19 this document?

20 A. Yes. I relied on Mark Kamholz.

21 Q. All right. I'd like to switch topics now and  
22 talk -- we can take that down, Lauren. Thank you.

23 Are you familiar with two abandoned tar tanks  
24 that were located in the coal field at the  
25 Tonawanda Coke Corporation?

1 A. Yes, I am.

2 Q. Can you describe the area around these tar  
3 tanks?

4 A. Tanks were relatively close, but, behind the  
5 tanks on the sides, there was a great deal of tar  
6 that was very visible from the road.

7 Q. Okay. When -- if you can tell the jury, when  
8 did you make this observation of the tar on the  
9 ground around the tanks?

10 A. Oh, about 1998.

11 Q. And how large was the pool of tar that you saw  
12 or the tar on the ground?

13 A. It's really hard to describe because it was so  
14 irregular. I couldn't give a good description.

15 Q. Did you -- from your observations, were you  
16 able to approximate the depth of this tar on the  
17 ground?

18 A. No, I was not.

19 Q. Okay. Based on what you observed -- let's  
20 start in 1998 -- did you bring this to anyone's  
21 attention?

22 A. Yes. I brought it to Mark Kamholz's attention.

23 Q. Okay. Why did you raise it with Defendant  
24 Kamholz?

25 A. Thought it might be a dangerous situation.

1 Q. All right. And following this conversation,  
2 what, if anything, happened to the ground around  
3 the tanks?

4 A. Some time maybe a week later, small coke or  
5 breeze was put on top of it to try to, I guess,  
6 make a hard surface out of it.

7 Q. All right. At some point later did you learn  
8 that there was a fire in the area around these  
9 tanks?

10 A. Yes. I was in the Netherlands at the time, but  
11 when I came home, I learned that there was a fire  
12 there in 2008.

13 Q. Okay. So you were in the Netherlands in 2008?

14 A. That's correct.

15 Q. After the fire, did you observe anything  
16 happening in the area of these tanks?

17 A. Sometime in late summer or early fall after the  
18 inspection of '09, Mr. Rogers was head excavator,  
19 and he was actually taking tar out of that area.

20 Q. So Mr. Rogers -- can you to tell the jury who  
21 you mean by Mr. Rogers?

22 A. Jon rogers.

23 Q. All right. So there's a person who worked at  
24 Tonawanda Coke Corporation?

25 A. Yes. Jon Rogers would be -- he was the

1 supervisor.

2 Q. All right. And what -- do you know what he was  
3 a supervisor of?

4 A. I don't know. You'd have to -- he had a lot of  
5 job titles.

6 Q. Okay. Had he been there for a while?

7 A. Yes. He was there a very long time.

8 Q. And what exactly did you observe Mr. Rogers  
9 doing in the area around these tanks?

10 A. Taking tar out of that area.

11 Q. Was he using any type of equipment to do that?

12 A. An excavator.

13 Q. Did you see him using the excavator?

14 A. He was on the machine when I saw him with a  
15 bucket, if you will, of tar.

16 Q. On how many occasions did you see this?

17 A. Just the one.

18 Q. All right. Did you make any other observations  
19 relating to the coal piles after you made this  
20 observation?

21 A. About a week later I was driving down a road,  
22 and I had -- there was a coal pile pretty close to  
23 that area, and it had -- it had some -- some of  
24 that -- I don't know if that was mixed, but it was  
25 definitely coal sludge.

1 Q. You saw some type of sludge on a coal pile?

2 A. That's correct.

3 Q. Was the coal pile on the concrete pad or on the  
4 ground?

5 A. It was on the ground.

6 Q. So you saw some what you describe as fresh  
7 sludge on a coal pile?

8 A. That's correct.

9 Q. Do you know how long that sludge was sitting on  
10 the coal pile?

11 A. No idea.

12 Q. Did it -- from when you saw it, did it look  
13 like anybody was about to scoop it up?

14 A. No.

15 Q. Okay. I'd like to show you Government  
16 Exhibit 49.16, which is in evidence, your Honor.  
17 Mr. Priamo, do you see this exhibit on your screen?

18 A. Yes, I do.

19 Q. All right. Can you tell us what this structure  
20 is here?

21 A. It's called a flare stack.

22 Q. If you can tell the jury, what is the purpose  
23 of the flare stack?

24 A. Purpose of the flare stack would be if you lost  
25 the exhauster or if you lost power in the plant,

1 the exhauster would not be able to pull gas from  
2 the coke ovens and all the gas would stay -- would  
3 back up and build up in the battery. And if you  
4 don't open that valve, it actually could do damage  
5 to the walls. You'd have smoke all over the place,  
6 and it would be unbreathable. So, the purpose of  
7 the flare stack is when this happens, is to open  
8 that and have it lit off.

9 Q. In your 32 years at the Tonawanda Coke  
10 Corporation, how many times have you seen the  
11 battery flare stack lit?

12 A. Twelve to 15 times.

13 Q. How does the -- how does the flare stack get  
14 lit off?

15 A. There's an automatic igniter at the base which  
16 would be roughly down here someplace.

17 Q. I don't think --

18 A. It's supplied by natural gas. There is a  
19 natural gas line that comes over which supplies  
20 that. It's always -- it's like a pilot light in  
21 your hot water heater.

22 Q. Okay. Has it always had a pilot light?

23 A. No, it has not.

24 Q. Okay. What was the period that it did not have  
25 a pilot light?

1 A. I don't know. It was for a long time. I don't  
2 know when it was removed.

3 Q. So for a long time?

4 A. Right.

5 Q. All right. Do you know what happened to the  
6 pilot light?

7 A. Just what I was told. It was removed.

8 MR. LINSIN: Objection. Hearsay.

9 THE COURT: As it stands now, yes,  
10 sustained.

11 BY MR. MANGO:

12 Q. Okay. Let's switch gears.

13 Did you ever have a conversation with Defendant  
14 Kamholz about how to light this battery flash  
15 stack?

16 A. Yes, I did. When there was no pilot light  
17 there, I asked him how do you want us to light  
18 that -- that flare stack. That's pretty tall. He  
19 said -- they used straw brooms to sweep the top of  
20 the battery. Get a straw broom, light it off, and  
21 to toss it up there.

22 Q. Okay. At some point was the pilot light put  
23 back in?

24 A. Yes, it was.

25 Q. Do you know why the pilot light was put back

1 in?

2 A. Larry Sitzman is a DEC official and he gave  
3 them a violation one day when he was in the plant  
4 for not having it.

5 Q. Do you know if this battery flare stack is  
6 supposed to have a pilot light?

7 A. Yes, it's supposed to have a pilot light.

8 Q. Okay. All right. Let's talk about the  
9 process -- we can take that down, Lauren. Thank  
10 you.

11 Let's talk about the process of quenching hot  
12 coke that comes out of the battery. Are you  
13 familiar with that process?

14 A. Yes, I am.

15 Q. All right. Can you tell the jury how many  
16 quench towers are at the Tonawanda Coke  
17 Corporation?

18 A. We have two. We have a number 1, which is on  
19 the east side, and number 2, which is on the west  
20 side of the coke battery.

21 Q. Okay. Did you ever have a conversation,  
22 Mr. Priamo, with Defendant Kamholz regarding quench  
23 tower number 2?

24 A. Yes, I did.

25 Q. This is the one on the east side, right?



1 A. Yes.

2 Q. All right. Why don't you tell the jury what  
3 you remember about your conversation with Defendant  
4 Kamholz.

5 MR. LINSIN: Your Honor, I would just ask  
6 a point of clarification, given the witness's  
7 testimony. We may have gotten this backwards.  
8 Could we clarify east, west, one, two?

9 THE COURT: Sure.

10 MR. PERSONIUS: Before we go ahead, could  
11 we have a clarification for the time frame for  
12 this, please?

13 MR. MANGO: We're getting to that, your  
14 Honor.

15 THE COURT: Let's start with the  
16 locations: One, two, east, west.

17 MR. MANGO: Okay.

18 THE COURT: The other way around.

19 BY MR. MANGO:

20 Q. Number 2 quench tower, where is that located?

21 A. East end of the battery.

22 Q. East end of the battery?

23 A. East end of the battery.

24 Q. Number 1 is located where?

25 A. West end of the battery.

1 Q. Do you recall a conversation with Defendant  
2 Kamholz regarding the number 2 quench tower?

3 A. Yes, I do.

4 Q. Okay. If you can tell the jury when that  
5 conversation occurred.

6 A. I believe it was in '95. It was -- it used to  
7 be called a quench tower, and they had -- it was  
8 falling apart, so they remodified it and made --  
9 and lowered it and called it a quench tower -- or  
10 station, I'm sorry. Called it a quench station.  
11 The quench tower had baffles in it and -- which  
12 would catch particles during the process of the  
13 quench to eliminate any fugitive dust.

14 And I asked Mark, there's no baffles in number  
15 2 quench tower since it's been lowered, and he  
16 said, well, it's a law that once it becomes a tower  
17 and not a station, it does not need baffles.

18 Q. Okay. You just said "once it becomes a tower  
19 and not a station". Do you mean that the other way  
20 around?

21 A. Yes. I meant the other way around, sorry.

22 Q. That's okay.

23 So at some point quench tower number 2 you  
24 recall being lowered?

25 A. Yes.

1 Q. How certain are you of that date, 1995?

2 A. I'm not really positive.

3 Q. All right.

4 A. Just -- it was -- it was a while ago.

5 Q. Okay. So at the time the quench tower is  
6 lowered, did you make an observation regarding  
7 whether there were baffles in the lowered quench  
8 tower or not?

9 A. Yes. There was no baffles. I looked in there.

10 Q. Okay. And you then brought this to Defendant  
11 Kamholz's attention?

12 A. Yes, I did.

13 Q. And what did he tell you about whether baffles  
14 were required in there or not?

15 A. He said they didn't require them anymore. It  
16 was a law that once -- once it was made a station,  
17 it was low enough where it didn't require them.

18 Q. Okay. From that --

19 MR. PERSONIUS: Your Honor, is this the  
20 same conversation twice, or is this another  
21 conversation?

22 THE COURT: Let's get the times set here.

23 MR. PERSONIUS: If it's just repeating  
24 what we already heard or if this is a new  
25 conversation. It's just not clear.

1 THE COURT: I think it's a continuing  
2 conversation.

3 MR. MANGO: I was trying to clarify since  
4 we had a switch up.

5 BY MR. MANGO:

6 Q. This is the same conversation you had in  
7 1995 --

8 A. Yes.

9 Q. -- approximately?

10 A. Yes.

11 Q. Okay. So from that point on, the time you  
12 bring this to Defendant Kamholz's attention, from  
13 that point on, did number 2 tower operate without  
14 baffles?

15 A. Correct.

16 Q. Okay. All right. I'd like to bring up  
17 Government Exhibit 15.02.097 which is in evidence,  
18 your Honor. Ask that it be published for the jury.

19 Mr. Priamo, do you see this picture on your  
20 screen?

21 A. Yes, I do.

22 Q. Okay. Do you recognize this photograph?

23 A. That's the bleeder stack from the boiler or  
24 from the by-product area.

25 Q. Okay. Do you know if the -- so you called this

1 the bleeder?

2 A. It was always called a bleeder, until after the  
3 inspection of '09. Then it was called the pressure  
4 relief valve. Then it was blanked off completely.

5 Q. All right. Do you know if the bleeder was  
6 operational between the period of 2005 and 2009?

7 A. It would bleed during reversals. Every 20  
8 minutes there would be a reversal where all the gas  
9 is off the battery. Sometimes it might be burning  
10 165,000 cubic feet of gas an hour. The gas has to  
11 go somewhere, so it would -- it would vent out of  
12 that pipe for roughly 15 or 30 seconds.

13 Q. Okay. That would happen during when?

14 A. A reversal on the battery, when the gas is shut  
15 off and before the other gas comes back on.

16 Q. Okay. Do you know what would come out of this  
17 bleeder during a reversal?

18 A. Coke oven gas.

19 Q. How would you know coke oven gas would come out  
20 of this?

21 A. Well -- well, the coke oven gas, even though  
22 it's cleaned in the by-product area, still has a  
23 lot of contaminants in it. They are known to get  
24 naphthalene and sulfur down in the gas pipe and in  
25 the basement of the battery. If it's really

1 extremely cold out, sometimes you could see crystal  
2 naphthalene in the air.

3 Q. Okay. So when naphthalene freezes --

4 A. When it gets cold, it crystallizes.

5 Q. Okay. Would you see the naphthalene crystals  
6 in the area of this bleeder?

7 A. Yes.

8 Q. Okay. Did you ever see any other type of  
9 material or frost?

10 A. Well, sometimes the road that's there, it's  
11 called Broadway, would be saturated, but I don't  
12 know what it was saturated with. It was saturated  
13 just in the general area.

14 MR. PERSONIUS: Your Honor, could we again  
15 have a time frame for this testimony?

16 MR. MANGO: Your Honor, I'd asked earlier,  
17 is it fair to say that this is -- this would be for  
18 the 2005 --

19 MR. PERSONIUS: Rather than have Mr. Mango  
20 suggest an answer to the witness, could we have the  
21 witness identify the time frame?

22 THE COURT: Yeah. Try to do it that way.  
23 Don't lead him into it. Give us a time frame,  
24 please.

25 BY MR. MANGO:

1 Q. Could you give the jury, Mr. Priamo, a time  
2 period that you would see these naphthalene  
3 crystals and/or frost?

4 A. Only -- only extremely cold weather in the  
5 wintertime.

6 Q. Okay. How about in the -- well, do you know if  
7 this bleeder was taken out of service at some  
8 point?

9 A. Yes. It was after the inspection of '09.

10 Q. Okay. So at some point -- you say  
11 "inspection." Do you mean the criminal search  
12 warrant?

13 A. Yes.

14 Q. Okay. Were you working during the criminal  
15 search warrant?

16 A. Yes, I was.

17 Q. Do you remember when that was?

18 A. I believe it was April.

19 Q. April?

20 A. I believe.

21 Q. Okay. Do you know if there were any other  
22 inspections?

23 A. Criminal inspections?

24 Q. Yeah.

25 A. I was out of town when --

1 MR. PERSONIUS: Your Honor, if he's out of  
2 town, this sounds like it's going to be hearsay.

3 THE COURT: Yeah.

4 MR. PERSONIUS: I'm concerned about it.

5 THE COURT: Sustained.

6 There's no question before you right now,  
7 Mr. Priamo. And what year are you talking about  
8 now as far as the naphthalene crystals are  
9 concerned?

10 THE WITNESS: There wasn't any certain  
11 time frame. It could be every winter. It could be  
12 whenever.

13 THE COURT: All right. Then the  
14 inspection that you were talking about in April, do  
15 you know what year that was?

16 THE WITNESS: It was in '09.

17 THE COURT: Okay. Thank you.

18 BY MR. MANGO:

19 Q. Okay. In April of '09, do you know how long  
20 that inspection lasted?

21 A. A week.

22 Q. A week, okay. Let me ask you this. I asked  
23 you for the period of 2005 to 2009. Prior to 2005  
24 did you ever have a conversation with Defendant  
25 Kamholz about this bleeder?



1 A. Yes, I did.

2 Q. Okay. If you can tell the jury, when -- when  
3 did this conversation take place?

4 A. Roughly 15 or 20 years ago. We were at very  
5 high production, seemed like we were bleeding gas  
6 more than usual. And --

7 Q. Why don't you tell -- tell the jury now, first,  
8 where did the conversation take place?

9 A. Took place at the bleeder itself. I saw  
10 Mr. Kamholz over there, and I walked up to him and  
11 I asked him if it was legal to bleed gas there, and  
12 he said yes, it was. And I said, "Is this supposed  
13 to be lit?" And he said, "You -- you don't have to  
14 worry about that." So I left it at that.

15 Q. Did you inquire any more after that?

16 A. No, I didn't.

17 Q. And at the time you had this conversation with  
18 Defendant Kamholz, what position did he hold?

19 A. Environmental manager.

20 Q. Okay. Let me ask you, do you know a person by  
21 the name of Pat Cahill?

22 A. Yes, I do.

23 Q. Okay. If you could, tell the jury how you know  
24 Pat Cahill.

25 A. He's worked there for numerous years. He

1 worked on the battery when I was battery  
2 supervisor.

3 Q. So at some point you two worked together?

4 A. Yes.

5 Q. How would you describe Mr. Cahill's  
6 personality?

7 A. Very easy-going.

8 Q. Okay. Now, you mentioned you recalled a  
9 week-or-so long inspection in April of 2009?

10 A. Right.

11 Q. Did there come a time during that inspection  
12 that you observed Pat Cahill speaking to inspectors  
13 in the area of this bleeder?

14 A. Yes.

15 Q. Okay. Who else did you see in the area at that  
16 time?

17 A. Mark Kamholz.

18 Q. Okay. Subsequently that day, did you see Pat  
19 Cahill again?

20 A. Sometime later that day Pat came up into my  
21 office and he was very, very upset.

22 Q. Okay. So you had a conversation with him?

23 A. Yes, I did.

24 Q. And during that conversation you made a note  
25 about his demeanor?

1 A. Yes.

2 Q. And it was that he was very upset?

3 A. Right.

4 Q. All right. You testified that you are no  
5 longer employed at the Tonawanda Coke Corporation.

6 A. That's correct.

7 Q. Okay. When did you -- when did you leave the  
8 Tonawanda Coke Corporation?

9 A. November of 2010.

10 Q. Can you tell the jury under what terms you left  
11 the Tonawanda Coke Corporation?

12 A. I was forced into retirement.

13 Q. Are you testifying here today because you hold  
14 any type of grudge or ill will against the  
15 Tonawanda Coke Corporation?

16 A. Not at all. While I was employed, they treated  
17 me well, with respect, and I was well paid.

18 MR. MANGO: Your Honor, if I just may have  
19 a moment.

20 THE COURT: Sure.

21 MR. MANGO: Nothing further, your Honor.

22 THE COURT: Okay. Mr. Mango, thank you.

23 MR. PERSONIUS: Your Honor, this would be  
24 another witness that I will ask your permission to  
25 go first, please.

1 THE COURT: Certainly, Mr. Personius. I  
2 think we're going to take a 15-minute break. We'll  
3 resume again at 3:45 and we'll go until 4:45 today.  
4 Okay?

5 Chris, can you handle the jury?

6 COURT SECURITY OFFICER: I'm giving it a  
7 shot. Good group.

8 (Jury excused from the courtroom.)

9 THE COURT: Okay. You can step down and  
10 we'll call you back in 15 minutes.

11 (Short recess was taken.)

12 (Jury not present in the courtroom.)

13 MR. PERSONIUS: I'm not going to have any  
14 questions, just so you know.

15 THE COURT: Let me sit down. You guys  
16 stay standing.

17 Okay. Let's see, anything on redirect?

18 MR. PERSONIUS: Mr. Linsin --

19 THE COURT: Oh, okay. All right. Bring  
20 the jury in.

21 MR. MANGO: I'd love to keep redirecting  
22 nothing.

23 Judge, before the jury comes out, we do not  
24 have another witness today.

25 THE COURT: Okay.

1 (Jury seated.)

2 THE COURT: All right. You help brighten  
3 up our day. It's always nice to have you come  
4 back. Please have a seat.

5 Okay. We have Mr. Gerald Priamo back on the  
6 stand. It's time for cross-examination.

7 Your finished with your direct, Mr. Mango?

8 MR. MANGO: Yes, your Honor. Thank you.

9 THE COURT: Okay. Ladies and gentlemen --  
10 the jury is here. Roll call waived. The attorneys  
11 and parties are back, present.

12 And, Mr. Linsin, do you have any  
13 cross-examination?

14 MR. LINSIN: Thank you, your Honor. May I  
15 proceed, your Honor?

16 THE COURT: Certainly, please.

17 CROSS-EXAMINATION BY MR. LINSIN:

18 Q. Good afternoon, Mr. Priamo.

19 A. Good afternoon.

20 Q. My name is Greg Linsin and I represent  
21 Tonawanda Coke Corporation. I wanted to follow-up  
22 on just a couple of areas with you, please, sir.

23 You testified on direct examination about a  
24 time in 2009 when you saw Jon Rogers removing some  
25 of the tar residue from the area of those storage

1 tanks, correct?

2 A. Correct.

3 Q. In your time, the number of years you've spent  
4 out at the plant, you've seen the coal tar sludge  
5 from the by-products area also taken out to the  
6 coal fields, correct?

7 A. Correct.

8 Q. I'm sorry?

9 A. Correct.

10 Q. And when you've observed that happening -- now  
11 you've -- did you ever operate one of those front  
12 end loaders that moved that stuff?

13 A. I tried once or twice. Not very good.

14 Q. Other individuals --

15 A. I never tried to move anything. I just tried  
16 to run the machine, but it wasn't my thing.

17 Q. But you would see these front end loader  
18 operators move the coal tar sludge from the  
19 by-products area and take it out to the coal  
20 fields, correct?

21 A. Correct.

22 Q. And you would see them put that material on top  
23 of the coal pile and then mix it with the coal, is  
24 that correct?

25 A. When they -- the decanter on Broadway across

1 from the ovens, when they would scoop it out, I  
2 wouldn't watch where they went. I knew they took  
3 it to the coal field, but I didn't watch them put  
4 it in the coal.

5 Q. All right. You also saw at some point there  
6 was a concrete pad that was built in the coal  
7 field, correct?

8 A. Correct.

9 Q. And do you recall what time frame that pad was  
10 constructed, or no?

11 A. No, I don't.

12 Q. All right. But did you observe that that  
13 concrete pad was sometimes used for the storage of  
14 some of this coal tar sludge that had been brought  
15 in from off-site?

16 A. Correct.

17 Q. All right. May I please have Defendant's  
18 Exhibit HHHH, which is in evidence, please. And  
19 enlarge that portion of the -- I'm sorry. Could we  
20 come back out. Let's try that area.

21 Now, you may not have seen this drawing before,  
22 but orient yourself, if you will. Do you see the  
23 coke ovens in the top center of the drawing?

24 A. Yes.

25 Q. And do you see the coal handling building just

1 to the left of that?

2 A. Right. Sorry. Yes.

3 Q. That's all right.

4 Now, when the coke is pushed out of the ovens,  
5 it is pushed in the direction that would be down on  
6 this diagram, is that correct? It's pushed -- the  
7 lower side of the coke ovens is --

8 A. Correct.

9 Q. -- is the push side, correct?

10 A. Correct.

11 Q. And --

12 A. The coke side.

13 Q. I'm sorry. The coke side. The push side would  
14 be to the top, correct?

15 A. Correct.

16 Q. And I'm just going to draw a line quickly here  
17 in the location of those two arrows.

18 Is that -- do you recognize the location of the  
19 quench tower number 2 and --

20 A. Right. Correct.

21 Q. -- and quench tower number 1 on the left, is  
22 that correct?

23 A. No, that's not correct.

24 Q. All right. The quench tower number 2 is marked  
25 with a -- the indication here, quench tower 2,



1 correct?

2 A. Correct. Quench tower 1 is down a lot further  
3 on your drawing.

4 Q. We will come back out further then,  
5 Ms. Henderson. Could you bring this back out.

6 Now, my apologies, sir. Do you see the quench  
7 tower which would be quench tower number 1  
8 appearing on the left side of this portion of the  
9 drawing?

10 A. Yes.

11 Q. All right. And the quench tower on the left or  
12 to the west, closer to the river, is quench tower  
13 number 1, correct?

14 A. Correct.

15 Q. And the quench tower on the right-hand side,  
16 quench tower number 2, is to the east side, is that  
17 correct?

18 A. That's correct.

19 Q. Now, in the time that you worked on the  
20 battery, worked at Tonawanda Coke, it's true, isn't  
21 it, that quench tower number 1, the tower on the  
22 left, was only used periodically?

23 A. Can you repeat that, and put some kind of a  
24 time frame in there?

25 Q. Sure. Let me frame it this way. Between 2005

1 and 2009, that time frame --

2 A. Okay.

3 Q. First of all, during that time period, quench  
4 tower number 1 was actually out of commission for a  
5 couple of years, correct?

6 A. That's correct.

7 Q. And at other times, when quench -- during that  
8 time frame when quench tower number 1 was not in --  
9 was not out of commission, it was only used  
10 infrequently, correct?

11 A. Correct.

12 Q. And it was quench tower number 2 that was used  
13 the vast majority of the time, correct?

14 A. That's correct.

15 Q. And that is -- quench tower number 2 is the  
16 tower that at one point was lowered, correct?

17 A. Correct.

18 Q. And your testimony was that that did not have  
19 baffles in it after it was lowered, correct?

20 A. Correct.

21 Q. After that tower -- quench tower number 2 was  
22 lowered. And your best recollection is that was in  
23 the mid-'90s, '95, '96, correct?

24 A. Correct.

25 Q. Do you recall clean air inspectors from the

1 Department of Environmental Conservation coming out  
2 to the plant and inspecting the plant?

3 A. Yes, I do.

4 Q. All right. And do you recall that occurring  
5 pretty much on an annual basis?

6 A. Yes.

7 Q. And perhaps some years even more frequently  
8 correct?

9 A. I'd see them there once a year.

10 Q. Okay. And to your knowledge, in that time  
11 period, 2005 to 2006, did any of those inspectors  
12 ever tell you, or did you hear any of them telling  
13 anyone else that baffles needed to be installed in  
14 quench tower number 2?

15 A. No.

16 Q. Now, you testified -- if we could take this  
17 down, Ms. Henderson. Thank you.

18 You testified about your work on the battery  
19 and that part of your duties was to supervise the  
20 battery foreman, is that correct?

21 A. Correct.

22 Q. And am I correct that each shift had its own  
23 battery foreman?

24 A. They rotated.

25 Q. All right. And yet your position was as

1 supervisor for each of those battery foremen,  
2 correct?

3 A. Correct.

4 Q. Now, in your work on the battery, did you  
5 become familiar with the term "back pressure"?

6 A. Of course.

7 Q. All right. And would you describe, please, for  
8 the members of the jury, what -- what back pressure  
9 is and why it's important?

10 A. Back pressure is how much coke oven gas is left  
11 in the oven on the pressure side of the battery and  
12 then on the suction side, what gas pressure is  
13 going to the exhauster.

14 Q. Is it fair to say for those of us who have not  
15 worked in a coke plant, that back pressure has some  
16 relationship to the amount of internal pressure  
17 that is contained within each of the ovens, is that  
18 correct?

19 A. That's correct.

20 Q. All right. And is it also accurate that it was  
21 the plant superintendent or one of the  
22 vice-presidents of the company that decided what  
23 that back pressure was supposed to be on the ovens?

24 A. That's not right. Usually it was up to the  
25 person that was running the battery to set the back

1 pressure. Only at the end, when Tom Bermingham  
2 came aboard, was pressure increased. He wanted it  
3 increased. We were always running five to six.

4 Q. All right. Tom Bermingham served as a  
5 consultant for Tonawanda Coke, correct?

6 A. Right.

7 Q. And you recall that it was between 2006  
8 and 2009 that he was there as a consultant?

9 A. Someplace around there.

10 Q. And it's accurate, isn't it, that  
11 Mr. Bermingham's belief was that it would be  
12 important to slowly increase the back pressure on  
13 the ovens, correct?

14 A. Correct.

15 Q. And that plan to slowly increase the back  
16 pressure was communicated to the people that worked  
17 on the battery, correct?

18 A. That's right.

19 Q. And some of the people that worked on the  
20 battery resisted that plan that had been developed  
21 by the company, correct?

22 A. I think we all did. I don't think it was  
23 developed by the company. It was developed by Tom  
24 Bermingham. And we all had disagreements that at  
25 that time he couldn't put that much pressure on the

1 battery because you were causing excessive stack  
2 smoke, because more pressure inside the oven would  
3 find any loose cracks in the brickwork and go into  
4 the flue walls and come back out the waste heat  
5 tunnel to the stack. And we tried to put -- the  
6 stack would continually smoke.

7 Now, everybody has different theories on back  
8 pressure. Until Mr. Bermingham came, we always ran  
9 that battery at low back pressure between five and  
10 six.

11 Q. All right. Let me come at this a slightly  
12 different way. Did you come to realize during your  
13 time as the -- as the supervisor for the battery,  
14 that there were certain general foremen on the  
15 battery that sometimes would lower the back  
16 pressure before one of these 303 inspections?

17 A. Correct.

18 Q. Do you have any understanding as to how often  
19 that happened?

20 A. No, I don't, to tell you the truth. It wasn't  
21 done on a frequent basis. And I don't know how  
22 long it took place for.

23 Q. And was it your impression, based upon your  
24 supervisory responsibilities on the battery and  
25 your oversight of these general foremen, that the

1 people that were doing that, lowering the back  
2 pressure before a 303 inspection, were doing it  
3 because they just didn't want to do their jobs  
4 required to maintain and seal the ovens?

5 A. Correct.

6 Q. As a matter of fact, in one of the times you  
7 were away from Tonawanda Coke and were traveling on  
8 other business, you came back and found that some  
9 of those general foremen had been lowering the back  
10 pressure in your absence, correct?

11 A. Correct.

12 Q. And you had direct words with those foremen  
13 telling them that that's not something that they  
14 should be doing, correct?

15 A. Correct.

16 Q. And one of those individuals was a Mr. Dolan,  
17 wasn't it?

18 A. Correct.

19 Q. Was it ever your practice, Mr. Priamo, did you  
20 ever instruct anyone or would you have authorized  
21 anyone to lower the back pressure just to trick the  
22 303 inspectors?

23 A. No.

24 Q. And if you had ever learned that someone was  
25 doing that, as you just testified, you would tell

1       them that that's not permissible and that's not  
2       something they should do, correct?

3       A.   It took a while before we finally got Mr. Dolan  
4       to start doing his job.   I even put an extra person  
5       on midnights to help seal doors so we could get by  
6       these inspections without lowering the back  
7       pressure.

8       Q.   In fairness to Mr. Dolan, that is a lot of work  
9       to a lot of doors on these ovens, correct?

10      A.   Correct.

11      Q.   And a lot of work in order to properly maintain  
12      the seals and the frames to get those doors sealed,  
13      correct?

14      A.   His job wasn't to change the gaskets in the  
15      door.   He had a person in the door room to do that.  
16      If he didn't put doors in there for him to gasket,  
17      the job's not being done.   I took his chess set  
18      away from him one day because I knew he was playing  
19      chess instead of doing his job.   So we had words  
20      about that.

21               MR. LINSIN:   Your Honor, I have no further  
22      questions.

23               Thank you, Mr. Priamo.

24               THE WITNESS:   You're welcome.

25               MR. MANGO:   I don't know if



1 Mr. Personius --

2 THE COURT: Mr. Personius?

3 MR. PERSONIUS: Your Honor, I have no  
4 cross-examination. Thank you.

5 THE COURT: Okay. Okay. Thank you.

6 MR. MANGO: Brief redirect, your Honor.

7 THE COURT: Okay. Sure.

8 REDIRECT EXAMINATION BY MR. MANGO:

9 Q. Mr. Priamo, how are you doing?

10 A. Good.

11 Q. All right. You mentioned -- you talked a  
12 little bit about the different quench towers at the  
13 Tonawanda Coke Corporation during  
14 cross-examination.

15 A. Right.

16 Q. All right. Do you recall if the number 1  
17 quench tower was ever brought back online at some  
18 point?

19 A. At the very -- yes, at the end. Maybe 2009 or  
20 '10 --

21 Q. Okay.

22 A. -- they started using it.

23 Q. All right. Before they brought it online,  
24 during the winter months, was quench tower number 1  
25 used at any time?

1 A. I couldn't tell you that, but I could tell you  
2 there was an automatic valve that would -- was on a  
3 timer that would keep the -- would quench itself,  
4 so the place would not freeze.

5 Q. You talked a little bit about the DEC coming on  
6 an annual basis?

7 A. Right.

8 Q. Do you remember that?

9 Did you ever yourself personally have  
10 conversations with the DEC?

11 A. Yes, I talked to them.

12 Q. What did you talk to the DEC about?

13 A. Nothing. In general, just what's going on  
14 today. You know, small talk.

15 Q. Did you ever discuss the baffles with the DEC?

16 A. No.

17 Q. Did you ever discuss the bleeder valve with the  
18 DEC?

19 A. No.

20 Q. Do you know if the quench tower at Erie Coke  
21 has baffles?

22 MR. LINSIN: Objection. Relevance.

23 THE COURT: Sustained.

24 BY MR. MANGO:

25 Q. During the period of time you were abroad,

1 would it be fair to say that you would not know  
2 everything that was happening on the battery?

3 A. That's a fact.

4 Q. Okay.

5 MR. MANGO: Thank you, your Honor.

6 Nothing else.

7 MR. LINSIN: Nothing further, your Honor.

8 Thank you.

9 THE COURT: Okay.

10 MR. PERSONIUS: Nothing, Judge.

11 THE COURT: All right. All right.

12 Mr. Priamo, you are excused.

13 THE WITNESS: Thank you, your Honor.

14 THE COURT: Appreciate it. Thank you.

15 Okay. I'm sorry, ladies and gentlemen,  
16 scheduling-wise we are at a point where I think it  
17 makes more sense to break and let you go home a  
18 little bit early. If you don't want to go, I've  
19 got work to do, so you can stay here while I get it  
20 done. I mean, everybody's, I think, in agreement  
21 that it would better if we started tomorrow. And  
22 we'll start at as close to 9:30 as we can tomorrow.  
23 Okay. And we'll have a -- should have a full day  
24 tomorrow. Thank you for working with us and  
25 cooperating.

1           We ask you and urge -- are we okay? Yeah?  
2           Keep your minds open, not prejudge the case, work  
3           to be fair to both sides. Remember, the government  
4           has the burden of proof. The defendants are  
5           presumed innocent. And you have to decide the fact  
6           issues that will be argued to you in connection  
7           with the 19 counts in the indictment. This still  
8           is the government's case. It will continue  
9           tomorrow, and, you know, we ask you to please don't  
10          do any media scouring, any research, any  
11          Internetting, any social media, and don't discuss  
12          this case amongst yourselves or anybody that you  
13          have contact with.

14          Okay. All right. Hate to see you go, but I  
15          look forward to seeing you tomorrow at -- what  
16          time?

17                 THE JURY: 9:30.

18                 THE COURT: See you then. Thank you.

19                 (Jury excused from the courtroom.)

20                 THE COURT: Okay. Are we -- please have a  
21          seat. Yes. I'm sorry. Will your first witness be  
22          Sean Hoffman?

23                 MR. PIAGGIONE: Yes, your Honor.

24                 THE COURT: Okay. Then with respect to  
25          the matter of precluding the testimony and the

1 pictures or the photos that we talked about  
2 earlier, I've had a chance to look at them at the  
3 break, and the testimony related, I think, to the  
4 no camera policy, and I ruled, at least at the  
5 point that we discussed it, that neither the  
6 cameras -- neither the testimony nor the  
7 photographs would be allowed. And I reaffirm that  
8 ruling. You know, I don't find that the no camera  
9 policy is really relevant to the open and obvious  
10 argument that was made by the government. I guess  
11 the real issue is whether all of this was open to  
12 the inspectors, really, and not the general public.  
13 So I think we have to view it in that context.

14 Second, I think the photos are a little bit  
15 troubling because a couple of them have this black  
16 smoke fusing out, and I think that could be  
17 possibly prejudicial without having to go into all  
18 kinds of explanations and maybe unsatisfactory  
19 discussion and that. So, I mean, I think that's  
20 problematic as well.

21 And, you know, I think the testimony about no  
22 cameras, you know, if you don't have the context of  
23 the industry as part of the consideration, it  
24 sounds, at first blush, a little sinister. And I'm  
25 not sure that that really is fair under the

1       circumstances.

2               So for those reasons, you know, I am going to  
3       reaffirm my decision and make it final with respect  
4       to both testimony about the -- the no camera  
5       policy, as well as precluding the admissibility of  
6       the photographs. So I think you have to work  
7       around that as far as this witness is concerned.

8               MR. PIAGGIONE: No problem, your Honor.

9               THE COURT: Okay. Okay. We'll see  
10       everybody tomorrow.

11              MR. LINSIN: Thank you, your Honor.

12              MR. MANGO: Thank you, your Honor.

13              THE COURT: You're welcome.

14              \*           \*           \*           \*           \*           \*

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CERTIFICATION

I certify that the foregoing is a  
Correct transcription of the proceedings  
Recorded by me in this matter.

s/Michelle L. McLaughlin  
Michelle L. McLaughlin, RPR  
Official Reporter  
U.S.D.C., W.D.N.Y.